Supreme Court, U.S.
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(1)

No.

IN THE

SUPREME COURT OF THE UNITED STATES

WILBUR H. FRIEDMAN, JR.,

Petitioner,

v.

MARYLAND INSURANCE ADMINISTRATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Maryland Rule 1-104, Unreported Opinions, is, on its face or in its application here, a denial of due process and equal protection.

2. Whether a rule of the Maryland Insurance Administration, COMAR 31.02.01.10-2.H, Effect of Summary Affirmance, is, on its face or in its application here, a denial of due process and equal protection.

PARTIES TO THE PROCEEDING

The parties to this proceeding are: Wilbur H. Friedman, Jr., an individual, (below, without the "Jr."), the Maryland Insurance Administration and Government Employees Insurance Company (herein GEICO), a wholly owned subsidiary of Berkshire Hathaway.

TABLE OF CONTENTS

Page

Questions Presented For Review i
Parties To The Proceeding ii
Opinions Below 1
Jurisdictional Statement 1
Statutes and Regulations Involved 1
Statement Of The Case 3
Departures From Established Precedent 16
Reasons For Granting The Petition 27
Conclusion 29

TABLE OF AUTHORITIES

Cases:

Bereano v. State Ethics Commission, 403 Md. 716, 944 A.2d 538 (2008) 18

Blades v. Swords, 107 Md.App. 178, 667 A.2d 917 (Md.App. 1995) 20

Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281 (1974), *rehearing denied*, 420 U.S. 956 17

Brodie v. Motor Vehicle Administration of Maryland, 367 Md. 1, 785 A.2d 747 (2001) 18

Burlington Truck Lines v. U.S., 371 U.S. 156 (1962) 18, 25, 26, 27

Chow v. State, 393 Md. 431, 903 A.2d 388 (2006) 17

Christopher v. Department of Health, 381 Md. 188, 849 A.2d 40 (2004) 24, 26

Cases, continued: Page

Duvall v. Wells, 4 H. & MH. 114 (1798) 23

Ehrlich v. Grove, 396 Md. 550, 914 A.2d 783 (2007) 20

Essgee Co. v. U.S., 262 U.S. 151 (1923) 26

Harvey v. Marshall, 389 Md. 243, 884 A.2d 1171 (2005) 24

Helle v. Public Utilities Commission of Ohio, 110 Ohio St. 434, 161 N.E. 282 (1928) 23

Hill v. Wilson, 134 Md. App. 472, 760 A.2d 294 (2000) 17

International Union (UAW) v. N.L.R.B., 459 F.2d 1329 (D.C. Cir. 1972) 23

Mehrling v. Nationwide Ins. Company, 371 Md. 40, 806 A.2d 662 (2002) 12, 18, 25

In re Timothy C., 376 Md. 414, 829 A.2d 1024 (2003) 23

Maryland Ice Co. v. Arctic Ice-Mach. Manuf'g. Co., 30 A. 633 (1894) 23

Motor Vehicle Administration v. Jones, 380 Md. 164, 844 A.2d 388 (2004) 24

Motor Vehicle Administration v. Shepard, 399 Md. 241, 923 A.2d 100 (2007) 17, 25, 26

Oakland v. Mountain Lake Park, 392 Md. 301, 896 A.2d 1036 (2006) 17

Peralta v. Heights Medical Center, 485 U.S. 80 (1988) 28

Simon Moskowitz v. Maryland Department of the Environment, OAH No. MDE-LHD-055-06-48463, May 18, 2007 22

Cases, continued: Page

Summers v. Mosely, 2 Cr. & M. 477, 149 Eng. Rep. 849 (1834) 26

Tanis v. Crocker, 110 Md.App. 559, 678 A.2d 88 (1996) 20

Thompson v. City of Louisville, 362 U.S. 199 (1960) 28

United Steelworkers v. Bethlehem Steel, 298 Md. 665, 472 A.2d 62 (1984) 18

U.S. v. Palmer, 864 F.2d 524 (7th Cir. 1988), *cert. denied*, 490 U.S. 1110 27

Vlandis v. Klein, 412 U.S. 441 (1973) 18

Wilson v. U.S., 221 U.S. 361 (1911) 26

Statutes:

18 U.S.C. Section 1702 27

18 U.S.C. Section 1708 27

Maryland Corporations and Associations Article, Sec. 2-414 21

Maryland Insurance Article, Section 2-210 . . . . . 4, 18

Maryland Insurance Article, Section 2-215 . . . . . 23, 24

Maryland Insurance Article, Title 27, Subtitle 3 . . . . . 10, 15

Maryland Insurance Article, Section 27-301 ff. 12, 13, 14, 15, 16, 19, 24

Maryland Insurance Article, Section 27-303 . . . . . 5, 7, 10, 11, 18, 19

Maryland State Government Article, Section 9-1602 ff. 21

Statutes, continued: Page

Maryland State Government Article, Section 10-206(a) 5, 21

Maryland Transportation Article, Section 17-103(b)(2) 12

Regulations:

Federal Rule of Appellate Procedure 32.1. 28

Maryland Rule 1-104. ..... 1, 27, 28

Code of Maryland Regulations (COMAR):

COMAR Section 28.02.01.08.B(8) 22

COMAR Section 28.02.01.10 6

COMAR Section 28.02.01.11 ..... 6, 7

COMAR Section 28.02.01.16.B(1) 10, 22

COMAR Section 31.02.01.10-2.D. 4, 22

COMAR Section 31.02.01.10-2.H. 12, 14, 25

Other:

Commentaries on the Laws of England, Proceedings in the nature of Appeals, Book the Third, Chapter the Twenty-Fifth, (Yale Avalon Project on the Internet) 23

OPINIONS BELOW

The decisions of the Office of Administrative Hearings Administrative Law Judge, the Maryland Insurance Administration (MIA), the Circuit Court for Montgomery County, and the Maryland Court of Special Appeals (CSA) are all unreported. However, the date of the CSA decision appears at http:courts.state.md.us/unreported_opinions.html for May 13, 2008. The Maryland Court of Appeals order denying the petition for certiorari, dated August 25, 2008, is reported at 405 Md. 506 (2008). The November 12, 2008 order denying the motion for reconsideration is apparently unreported. See 406 Md. 443-444 (2008).

JURISDICTIONAL STATEMENT

The state proceedings are set forth above. As noted, Maryland's Court of Appeals denied a motion for reconsideration on November 12, 2008. This Court has jurisdiction under 28 U.S.C. Sec. 1257(a). The Attorney General of the State of Maryland, by an assistant attorney general, has been a party to this proceeding.

STATUTES AND REGULATIONS INVOLVED

1. Maryland Rule 1-104, Unreported Opinions:

   (a) Not authority. — An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

   (b) Citation. — An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority.

In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported decision shall attach a copy of it to the pleading, brief, or paper in which it is cited.

2. Maryland Insurance Administration Rule, COMAR 31.02.01.10-2.H (Effect of Summary Affirmance):

(1) If the Commissioner issues a final order that summarily affirms the proposed order of an administrative law judge without discussing the facts and legal issues and without expressly adopting the administrative law judge's legal analysis and proposed conclusions of law, neither the final order nor the proposed order is precedent within the meaning of stare decisis.

(2) Notwithstanding Section H(1) of this regulation, a final order of the Commissioner that summarily affirms the proposed order of an administrative law judge without discussing the facts and legal issues and without expressly adopting the administrative law judge's legal analysis and proposed conclusions of law may be cited and relied on in a proceeding before the Commissioner, the Office [of Administrative Hearings] or a court:

(a) When relevant under the doctrine of the law of the case, res judicata, or collateral estoppel; or
(b) In any subsequent disciplinary proceeding involving a party to the final order.

* * *

3. The following statutes are set forth in the Appendix:

- Maryland Insurance Article, Title 27, Subtitle 3, Sections 301; 302 (excerpt); 303 (excerpt); 304 (excerpt); 305 (excerpt); 306 (Appendix CC)
- Maryland Insurance Article, Section 2-210(a)(2) and (c) (Appendix DD)
- Maryland Insurance Article, Section 2-215(a) (excerpt); (c) (excerpt); (h) (Appendix EE)
- Maryland State Government Article, Sections 9-1602, 9-1603, 9-1604, 9-1606 (excerpts) (Appendix FF)
- Maryland State Government Article, Section 10-206(a) (excerpt) (Appendix GG)
- Maryland Corporations and Associations Article, Section 2-414 (Appendix HH)
- 18 U.S.C. Section 1702, Obstruction of correspondence (Appendix II)
- 18 U.S.C. Section 1708, Theft or receipt of stolen property generally (excerpt) (Appendix JJ)

STATEMENT OF THE CASE

Respondent Government Employees Insurance Company (herein GEICO), insures a car of Mr. Vinh Phuc Nguyen. GEICO's press release dated March 1, 2007 (App. Y, p. 90a), reveals that GEICO has 7 million policy holders. GEICO.COM/ABOUT/CORPORATE/AT-A-GLANCE/, the current website version, reveals that GEICO has 23,000 employees and 12 major offices around the country. GEICO handles Maryland auto claims at its Fredericksburg, Virginia facility. As set forth below, in 2006, the Maryland Insurance Adminis-

tration treated David H. Pushman, a GEICO vice-president, as its point of contact at Fredericksburg. A February 1, 2008, affidavit from GEICO's vice-president Stewart, App. Z, p. 91a, states that Mr. Pushman was in charge of the Fredericksburg office, went on sick leave on June 27, 2006, and did not report to work thereafter.

Nonetheless, the GEICO press release (App. Y, p. 90a) announced that after June 2006, GEICO transferred Mr. Pushman to Washington, D.C. headquarters in a different position and retained him as vice-president, and that he was scheduled to retire sometime after March 1, 2007.

As set forth in the opinion of the Court of Special Appeals (CSA) herein at Appendix C (p. 6a), on May 16, 2006, Petitioner's car was unloading its passengers. Mr. Nguyen's car collided with Petitioner's car, causing property damage for which GEICO, by claims examiner Christinia Krech, refused to pay. On June 23, Petitioner complained to Respondent Maryland Insurance Administration (MIA). Appendix X, p. 88a.

By letter dated July 6, App. W, p. 86a, addressed to vice-president Pushman at GEICO's Fredericksburg location, MIA requested information about the collision. By letter dated July 13, App. V, p. 84a, GEICO's Regional Liability Director Herbert replied that the July 6 letter had been referred to him. The director sent MIA GEICO's computer log and other "pertinent confidential documents." By letter dated July 25, App. U, p. 82a, MIA informed Petitioner, copy to Mr. Herbert, that its administrative investigation has disclosed no violation but that Petitioner enjoyed a right to hearing under Section 2-210 of the Maryland Insurance Article, App.

DD, p. 105a. By letter dated August 14, App. T, p. 80a, Petitioner requested a hearing. It referenced Petitioner's June 23 letter to MIA, in which Petitioner alleged that GEICO had a pattern of refusing to pay claims which, as here, alleged only property damage when, again as here, the witnesses lived out of state and trial was improbable. By letter dated September 20, App. S, p. 78a, addressed to Petitioner and vice-president Pushman, MIA informed them that a hearing would be held. By letter dated October 4, App. R, pp. 76a-77a, MIA informed Petitioner and GEICO — GEICO addressee not given — that it had delegated hearing authority to Maryland's Office of Administrative Hearings (OAH). The letter says:

> Take notice that specific attention at the hearing will be directed to Maryland Code Annotated, Section 27-303.

In the meantime, Petitioner had complained to a Maryland district court that Mr. Nguyen had committed a misdemeanor by reckless driving. At an August 31 hearing, App. Q, pp. 73a-75a, Mr. Nguyen spoke through an interpreter and showed extremely limited English proficiency. The court found that the evidence against Mr. Nguyen did not meet the criminal standard of proof.

State Government Article, Sec. 10-206(a), App. GG, p. 110a, authorizes OAH to make rules governing the procedures in OAH-conducted hearings, and the rules are set forth in Section 28 of the Code of Maryland Regulations (COMAR). By letter dated October 11, App. P. pp. 71a-72a, OAH informed Petitioner that

hearing would be on December 5. It informed him of OAH subpoena rules.[1]

By letters dated November 1 and 6, App. O, pp. 69a-70a, addressed to vice-president Pushman, Petitioner requested, under COMAR Section 28.02.01.10[2] that GEICO produce certain records. John Edmonds, Continuing Claims Supervisor at Fredericksburg, sent a letter dated November 2, App. N, p. 67a, to Petitioner. He acknowledged receipt of Petitioner's request, but declined to produce any of the documents. There was no response to the second request.

---

[1] In relevant part, COMAR 28.02.01.11, Subpoenas, provides:

A. Issuance of Subpoenas: On request of a party, or at the direction of a judge, the Office may issue subpoenas requiring the attendance and testimony of witnesses and the production at the hearing of any tangible item in the possession or under the control of the witness.

* * *

C. Service of subpoenas.

(1) Subpoenas may be served by:

* * *

(b) Certified mail to the person at the address specified in the subpoenas request.

* * *

E. Objections to Subpoenas: A person may object to the subpoena by filing a motion to quash or for other relief.

[2] In relevant part, COMAR 28.02.01.10, Discovery, reads:

A. By written request filed not later than 30 days before a scheduled hearing, a party may require any other party to produce within 15 days, for inspection or copying, any file, memorandum, correspondence, document, object or tangible thing:

(1) Relevant to the subject matter of the case; and

(2) Not privileged.

By letter dated November 6, App. M. pp. 62a-66a, pursuant to OAH COMAR Rule 28.02.01.11, Petitioner requested OAH to serve the following subpoenas: On Mr. Nguyen and GEICO claims examiner Krech, to attend and testify; on vice-President Pushman, to produce tangible items at the hearing. The last sought, in numbered item 7, "All records . . . relating to" the collision of May 16. It also sought records which reveal the organizational structure and the names of the individuals who occupied the positions at the Fredericksburg, Va. claims office on May 25, 2006 and date, names of the custodians of the records, and evidence of the existence of general rules under which GEICO would deny meritorious claims. By registered letters dated November 9, OAH mistakenly served identical subpoenas ad testificandum and duces tecum on Mr. Nguyen, vice-president Pushman, and examiner Krech. GEICO Fredericksburg employee Amy Vandevender signed the receipts for vice-president Pushman and Ms. Krech. Apps. L and K, pp. 56a-61a.

On November 16 and 21, App. J, pp. 53a-55a, GEICO filed its motions for a protective order and to quash the subpoena. It claimed that the documents sought were irrelevant, overly broad, unduly burdensome, and contained requests for privileged information, and that Petitioner was attempting both to litigate his negligence case as well as harass and inconvenience both GEICO and Mr. Nguyen. Finally, GEICO's counsel argued that the sole relevant issue was whether GEICO violated Section 27-303(2).

At the December 5 hearing, App. I, pp. 50a-52a, GEICO elected to bring examiner Krech to testify, but

declined to produce any of the subpoenaed documents. The ALJ asked examiner Krech how she settled claims:

> TR. 39: l. 8: Q: Are you governed by any GEICO procedures or policy letters or anything that tells you one way or another how to settle a claim?
>
> l. 11: A: No, sir.
>
> l. 12: Q: You're free to settle them the way you see them?
>
> l. 14: A: Yes, sir. . . .
>
> l. 17: Q: You review the facts and you make the call?
>
> l. 19: A: Yes, sir.

As noted, Petitioner had subpoenaed records on this issue. At the hearing, he put the same kind of questions to Ms. Krech. She answered that there was no manual governing claims procedures and that she attended no training sessions, other than those required by the State of Delaware, on that subject. App. I, p. 51a. Ms. Krech also said of her conversation with Mr. Nguyen, the insured, TR. 22, line 8 ff.

> I had to listen to him carefully, I did repeat one question, but he came off clear to me. * * * I didn't need a translator when I was talking to him. * * * We had a good communication, I thought.

Both Petitioner and GEICO's counsel had brought translators to the hearing. TR. 5, l. 21. And as noted, at the criminal proceeding Mr. Nguyen showed limited English proficiency.

GEICO moved to quash the subpoena duces tecum on vice-president Pushman on several grounds. One was that he had been replaced by October 2nd and therefore was

no longer at GEICO to get the subpoena. The ALJ agreed, TR 65, l. 7 ff., that the subpoena duces tecum required the physical presence of vice-president Pushman at the hearing, and that inasmuch as he had been replaced due to illness, the service of the subpoena was ineffective.

> No. The subpoena to produce tangible documents at the hearing, so it means he had to come up here with the documents. So even though it's not technically the way you wanted it, in my judgment it's the same thing. So that cures that. He had to be here, right?

At the hearing, the ALJ quashed the subpoena for the statement that Mr. Nguyen had given to GEICO, other records of the collision, and GEICO's manuals and practices. TR. 16, l. 22. He found irrelevant: "what happened at the accident," TR 58, l. 16; and the testimony of Mr. Nguyen, App. I, TR 61, l. 8, p. 52a. The ALJD incorporated into the hearing record only the documents from the MIA investigatory file and one exhibit that GEICO introduced, but none of the documents relating to the information request and the subpoenas.

On December 12, App. H, pp. 48a-49a, Petitioner moved the ALJ to make, in his ALJ decision, certain explicit findings and to state reasons for certain rulings. He also moved the ALJ to make part of the record the information and subpoena requests and motions regarding them.

On December 26, 2006, App. F, pp. 37a-45a, the ALJ issued his proposed decision. It found the testimony of the claims examiner fully credible and that GEICO had performed a reasonable investigation and properly decided that the conduct of Petitioner's passenger was solely responsible for the collision. The ALJD limited the decision to the issue of whether GEICO's conduct

had been arbitrary or capricious, and said that that test is confined to the test of whether the decision is supported by substantial evidence. The ALJD makes no reference to Ms. Krech's testimony that she is not subject to instructions on how to resolve claims. The ALJD denied Petitioner's post-hearing motions as untimely. It relied on COMAR Section 28.02.01.16.B(1), which reads, in its entirety, "A party may move for appropriate relief before or during a hearing."

When Petitioner got his copy of the transcript, he filed a motion to correct errors in transcript, a first alternative motion to remand to ALJ to correct errors, and a second alternative motion to adopt other just and proper procedure to correct errors in transcript.

Petitioner also filed timely exceptions and a supporting brief. App. G, pp. 46a-47a. He argued that the following ALJD rulings were all error:

(1) Vice-president Pushman's incapacity made the subpoena a nullity; (2, 3, 9, 10) The records Petitioner sought, the testimony of Mr. Nguyen, the transcript of the related criminal proceeding, and the content of an offer of proof were all irrelevant; (4) Title 27 subtitle 3, App. CC, pp. 102a-104a, of the Insurance Article

> did not create an adjudicatory process to allow claimants to dispute liability in accidents; liability disputes properly belong in the constitutional courts.

(5) The terms "arbitrary" and "capricious," as used in Section 27-303(2) are narrower than the well established judicial definition; (6) The ALJ's findings of fact were supported by the credible evidence; (7) The ALJ properly failed to incorporate the documents relating to the

discovery and subpoenas; (8) Petitioner's motions made after the record was closed were untimely; and (11) the adverse inference rule was inapplicable. Petitioner also argued that by placing impermissible burdens on the exercise by Petitioner of his statutory right, the ALJ committed a constitutional tort.

On February 5, 2007, App. E, pp. 27a-36a, MIA affirmed the ALJD. It ruled: The only issue before the ALJ was whether GEICO had violated Section 27-303(2) of the Insurance Article (pp. 29a-30a); MIA did not enjoy the power to correct or to cause the correction of errors in the transcript. Petitioner was litigating his dispute in the wrong forum; The subpoena was not properly served on Mr. Pushman;

> Complainant did not address his subpoena to a records custodian or a corporate officer, but rather to an individual. * * * What Complainant fails to recognize is that even if the subpoena had been served, it would have been quashed as being oppressive, burdensome, and a request for irrelevant documents.

The information requested in numbered item 7, and all records relating to the collision, were made available at the hearing;[3] Petitioner's assertion that claims examiner Krech committed perjury was scurrilous; The testimony of Mr. Nguyen could not possibly bear on the issue before the ALJ; Petitioner must prove that arbitrary and capricious actions "were directed specifically to him";

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[3]However, as MIA's brief in the Court of Special Appeals notes, p. 12, GEICO took a recorded statement from Mr. Nguyen. GEICO never produced it.

Petitioner was not entitled to have the prehearing pleadings made part of the record, but the issue is moot because they had already been made part of it; The ALJ properly ruled that the evidence Petitioner sought to introduce was irrelevant; And finally that this decision is not stare decisis, as

> A Recommended Decision summarily affirmed under COMAR 31.02.02.10-2.H is not precedent within the meaning of stare decisis in other cases.

On February 23, 2007, Petitioner filed an appeal with the Circuit Court for Montgomery County. By order dated June 18, App. D, p. 26a, that court affirmed MIA. Petitioner says nothing else about that proceeding because under well settled Maryland law, appellate courts review the decision of the agency and not that of the circuit court: E.g., *Mehrling v. Nationwide Ins. Company*, 371 Md. 40, 57, 806 A.2d 662 (2002).

On July 13, 2007, Petitioner appealed to the Court of Special Appeals (CSA). Thereafter, in his main brief, he argued, pp. 1-2, that:

> 1. COMAR rule 31.02.01.10-2.H (Effect of Summary Affirmance) is invalid on its face as (1.1) beyond the power of the Maryland Insurance Administration (MIA) to make, (1.2) arbitrary and/or capricious, and (1.3) a denial of due process and/or equal protection;
>
> 2. MIA, to the prejudice of Complainant, departed from its own rule by failing to make its decision herein one with precedential effect;
>
> 3. MIA has implemented a conclusive presumption, one in direct conflict with the statutory commands of Sections 27-301 ff. of the Insurance Article and Section 17-103(b)(2) of the Transportation Article;

> 4. MIA implemented its conclusive presumption above by refusing to discredit a witness, the GEICO claims agent, and by ruling irrelevant evidence as would further discredit her;
>
> 5. MIA improperly made findings of fact and conclusions of law based on an unlawful and unconstitutional procedure;
>
> 6. MIA improperly disclaimed power both to correct errors in the transcript and to remand the case to OAH for the ALJ to make the corrections;
>
> 7. MIA found improper the service of a subpoena on a vice-president of GEICO.[4]

On May 14, 2008, App. C, pp. 3a-25a, CSA issued an unreported opinion. It there said that: Petitioner was "abusing the judicial process and dissipating judicial resources" by pursuing his appeal; The standard of review consists of the substantial evidence and error of law tests; "Administrative agencies are entitled to deference as to their interpretation of statutes they are charged with administering"; Petitioner had waived reliance on other sections of Section 27-301 ff.; MIA had properly adopted a narrow definition of the terms "arbitrary" and "capricious": and, p. 19a,

> Evidently, appellant expected the ALJ and MIA to conduct a trial and to assess the credibility of the witnesses. It is beyond the authority of these administrative bodies to adjudicate tort claims and to award monetary damages under an administrative action initiated for the purpose of determining the reasonableness of an insurance company's actions. These fora were not proper for the type of redress sought by appellant.

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[4]Petitioner should have said: MIA improperly found improper . . .

CSA also ruled as follows:

The ALJ properly excluded evidence as irrelevant; Ms. Krech did not commit perjury; "GEICO's dealing with other customers was not the issue"; The issue was whether Petitioner "was contributorily negligent"; The ALJ properly refused to consider Petitioner's post-hearing motions as untimely; The subpoena on vice-president Pushman was not properly served; and, p. 25a, that "There is no right to a decision that has prospective effect."

Petitioner filed a petition for certiorari with the Maryland Court of Appeals. The issues he presented there were:

> 1. Whether MIA has subverted the legislative intent by implementing evidentiary and other rules which make it impossible to prove that insurance companies violate Section 27-301 ff. of the Insurance Article; and
>
> 2. Whether COMAR Rule 31.02.01.10-2.H (Effect of Summary Affirmance) is invalid on its face as beyond the power of MIA to make, arbitrary and/or capricious, and/or a denial of due process and/or equal protection.

The petition argued, p. 16, that CSA erred in providing a justification for MIA's action. It disputed CSA's ruling that there is no right to a decision that has stare decisis precedential effect. At p. 21, Petitioner said that he "respectfully submits that due process requires more of the CSA."

On August 25, 2008, App. B, p. 2a, the Court denied the petition.

On September 19, 2008, Petitioner filed a timely motion for reconsideration, which argued:

> II. By its denial of certiorari, this Court is tolerating gross violations of equal protection.
>
> * * *
>
> III. By its denial of certiorari, this Court is permitting the maintenance and implementation by Special Appeals and MIA of a secret law. This court should use this case as a vehicle to replace Rule 1-104 with Federal Rule [of Appellate Procedure] 31.2.
>
> * * *
>
> IV. By its denial of certiorari, this court has tolerated a number of gross violations of due process.

On November 12, 2008, App. A, p. 1a, the court denied the motion for reconsideration.

Insurance Article Title 27 Subtitle 3, App. CC, pp. 102a-104a, is entitled "Unfair Claim Settlement Practices." 301(a) recites the intent of the subtitle: to provide an additional administrative remedy for claimants. 302 provides that it applies to all insurance policies issued in Maryland. 303 outlines unfair claim settlement practices. They include: (1) misrepresentation of pertinent facts or policy provisions that relate to the claim at issue; (2) refusal to pay a claim for an arbitrary or capricious reason based on all available information; and (6) failure to provide promptly on request a reasonable explanation of the basis for denial of a claim. 27-304 outlines unlawful general practices; the equivalents of 303(1), (2) and (6) are Sections 304(1), (15) and (14). Section 27-305 sets forth penalties, which are much higher for unlawful general practices.

At all times, Petitioner has contended that GEICO's insured was responsible for the collision and that GEICO gave a false reason for its denial of the claim. Petitioner sought by his discovery request, subpoena, and his attempted examination of the GEICO claims examiner to determine what facts GEICO had at the time it denied the claim, and that the decision to deny was motivated by other reasons, particularly that GEICO's actions towards him were part of a pattern — denials of small claims for property danage when the witnesses resided in other states and were unlikely to appear in court — and not directed solely to him. Thus Petitioner was claiming that GEICO violated Sections 27-303(1), (2) and (6) and their Section 304 counterparts.

DEPARTURES FROM ESTABLISHED PRECEDENT

Below, Petitioner will show — by the following eleven numbered items — that CSA, MIA, and OAH made rulings herein that clearly would not have been made in reported decisions with precedential stare decisis effect. Some would not have been made in reported decisions because they depart from one or more established Maryland rules; others would not have been made in reported decisions because they would embarrass the judicial system and the institutions of government. Petitioner raised all of these issues to the CSA, except for CSA's having supplied reasons for the conduct of MIA; and that he brought to the attention of Maryland's Court of Appeals.

1. As to the ruling that Petitioner was not entitled to introduce evidence and to cross-examine, first, the stated legislative intent of Sections 27-301 ff. is to give claim-

ants an additional remedy for unfair settlement claims practices. And:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature . . . . [I]f the plain language of the statute is unambiguous and consistent with the statute's apparent purpose, we give effect to the statute as it is written.[5]

Here the statement of legislative intent and language of the statute are clear. But ALJ and MIA made it difficult, if not impossible, to establish a violation of Section 27-301 ff.

Second, the general rule as to cross examination, as stated in *Hill v. Wilson*, 134 Md. App. 472, 480, 760 A.2d 294 (2000), is:

> A witness generally may be cross-examined on any matter relevant to the issues, and the witness's credibility is always relevant . . .

But here CSA said that Petitioner was not entitled to assess the credibility of the witnesses. In addition, in a reported decision, unlike here, a court would avoid constitutional issues. But here the denial of cross examination also implicates due process; this Court has said:

> Indeed, the due process clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.[6]

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[5] *Oakland v. Mountain Lake Park*, 392 Md. 301, 316, 896 A.2d 1036 (2006); *Motor Vehicle Administration v. Shepard*, 399 Md. 241, 254, 923 A.2d 100 (2007); *Chow v. State*, 393 Md. 431, 443, 903 A.2d 388 (2006) (same, but "statutory interpretation").

[6] *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 288 (1974), rehearing denied 420 U.S. 956.

As noted, Petitioner also argued that the denial of cross examination in substance created a conclusive presumption. In *Vlandis v. Klein*, 412 U.S. 441, 446 (1973), this Court said:

> Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments.

Third, the *Burlington Truck* administrative law rules that a

> reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency . . . . The courts may not accept appellate counsel's post hoc rationalizations for agency action . . .[7]

are settled law in Maryland. MIA and the ALJ had ruled piecemeal that various evidence Petitioner sought to introduce was all irrelevant. They gave no reason why. But CSA supplied a general (albeit not a felicitous) reason why, that this type of administrative proceeding is not the kind of proceeding in which a complainant is entitled to have MIA assess the credibility of the witnesses.

2. As to MIA's limitation of the complaint to a violation of Section 27-303(2), Insurance Article Section 2-210(a)(2), App. DD, p. 105a, provides that the Maryland Insurance Commissioner shall hold a hearing on

---

[7] *United Steelworkers v. Bethlehem Steel*, 298 Md. 665, 679, 472 A.2d 62 (1984), citing *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 167-168 (1962); *Brodie v. Motor Vehicle Administration of Maryland*, 367 Md. 1, 3-4, 785 A.2d 747 (2001); *Mehrling*, above, p. 65; *Bereano v. State Ethics Commission*, 403 Md. 716, 743, 944 A.2d 538 (2008).

written demand by any person aggrieved by an action of the Commissioner. There is nothing in the statute that limits the hearing to Section 27-303(2) and MIA's order directing a hearing said only that specific attention would be devoted to Section 27-303. The investigator, Appendix U, p. 83a, and GEICO's counsel, Appendix J, p. 53a, sought to limit the litigation to 303(2). That ALJ agreed and ruled irrelevant evidence that would show violations of other sections of Sec. 27-303 and 304, namely that GEICO's explanation of its action was false, and that GEICO misrepresented the facts. CSA ultimately ruled that Petitioner waived reliance on any other part of Section 27-301 ff. and was confined to litigating Section 27-303(2). Petitioner continued to argue that the rejected evidence should have been admitted.

On these facts, the substantial evidence rule bars the conclusion that one who claims that the rejection of evidence was error somehow waives the argument which the evidence would support. The substantial evidence rule requires a finding that the only waiver that may even arguably be attributable to Petitioner was his failure to move to strike representations of GEICO's counsel that vice-president Pushman was on sick leave; OAH treated these representations as evidence.

3. Rulings in published decisions that tolerate obvious perjury violate the substantial evidence rule; they would also embarrass the judiciary. But here MIA and CSA denied that examiner Krech committed perjury

by her statements that there were no manuals nor procedure letters nor training sessions instructing her how to resolve claims. In addition, as MIA would have received into evidence the transcript of the criminal proceeding, it would have found that Mr. Nguyen had limited English proficiency and that Ms. Krech's statement that she and he had "good communication" was also perjury.

4. As to the burdensomeness of the subpoenas, there is no Maryland rule that if a subpoena seeks too much, the one who subpoenas it is entitled to nothing. On the contrary, *Blades v. Swords*, 107 Md.App. 178, 182-183, 667 A.2d 917 (Md.App. 1995), said: "The discovery rules are broad and comprehensive and should be liberally construed." *Blades* was cited with approval in *Ehrlich v. Grove*, 396 Md. 550, 560, 914 A.2d 783 (2007). In addition, in *Tanis v. Crocker*, 110 Md.App. 559, 575, 678 A.2d 88 (1996), the court found that the lower court abused its discretion in issuing a protective order. The court followed Rule 16(c) of Federal Rules of Civil Procedure: the party seeking the protective order has the burden of making a particular and specific demonstration of fact, as distinguished from general, conclusory statements, revealing some injustice, prejudice, or consequential harm that will result if protection is denied. Here, however, GEICO did not make the demonstration required by *Tanis*, and yet ALJ, MIA and CSA ruled that Petitioner's subpoena duces tecum should be quashed in its entirety because it was burdensome.

5. As to the departure from Fredericksburg of vice-president Pushman, under Sec. 2-414(b) of the Corporations and Associations Article, App. HH, p. 111a, a third party's rights are not affected by changes in an agent's duties unless he had knowledge of the company bylaw or resolution changing them. As to the validity of the service of the subpoena on vice-president Pushman, Petitioner restates the facts: Vice-president Pushman ceased working in June 2006, but continued on as a vice-president. MIA served letters dated July 6 and September 20 on him. Petitioner served a discovery request dated November 1 on him. GEICO treated all these as communications with the corporation. OAH served the subpoena on vice-president Pushman on November 13. MIA said:

> Complainant did not address his subpoena to a records custodian or a corporate officer, but rather to an individual.

But Petitioner did not know that vice-president Pushman had been replaced until GEICO's counsel served the motions to quash the subpoena. The statement that the subpoena was not addressed to a corporate officer does not pass the substantial evidence test.

In addition, the subpoena was issued under OAH and not MIA rules. And under Maryland law, OAH is a separate administrative agency. Thus the State Government Article provides, Sec. 9-1602 ff. and 10-206(a), App. FF, GG. pp. 108a-110a, that OAH is an independent agency, headed by a Chief ALJ, a political appointee. He is empowered and directed to develop rules and procedures and those rules govern OAH hearings. A reported ruling here that OAH's subpoena powers were ineffective would undermine OAH procedures and thereby embar-

rass OAH. There is no Maryland rule that grants deference to the construction of one agency's rule by either its own ALJ or by another agency. In a reported decision, CSA would not have found deference to be warranted.

6. As to the timeliness of a motion after the close of the hearing but before the ALJD issued, in *Simon Moskowitz v. Maryland Department of the Environment*, OAH No. MDE-LHD-055-06-48463, May 18, 2007, App. AA, p. 93a, which Petitioner cited in his main brief to CSA, an OAH ALJ granted a motion to reopen a closed hearing for the introduction of more evidence. Again, COMAR 28.02.01.08.B(8) empowers ALJs to "Request parties to submit legal memoranda, proposed findings of fact, and conclusions of law." By implication, ALJs enjoy authority to consider post-hearing motions to extend time for filing documents. Moreover, Sec. 28.02.01.16.B(1) says nothing about motions between the close of the hearing and the date the ALJ files his decision. In addition, as shown below, ALJs, MIA and reviewing courts all enjoy the power to cause the correction of the record. But the ALJ ruled that under 16.B(1) post hearing motions were untimely.

As to MIA, COMAR Sec. 31.02.01.10-2.D, Final Order Following Proposed Decision, relates to cases where, as here, MIA has delegated authority to OAH to make a proposed decision. It reads:

> Types of Action by the Commissioner. The Commissioner may affirm, reverse, or modify the proposed findings of fact, proposed conclusions of law, or proposed order, or remand the case to the Office for further proceedings by setting forth, with particularity, the basis for the Commissioner's reversal, modification, or remand.

But this clearly empowers MIA to remand to correct the record. As to CSA, under Sec. 2-215(h) of the Insurance Article, App. EE, p. 106a, a court can require the agency to take additional evidence. As to all three, and in any event, in *In re Timothy C.*, 376 Md. 414, 429-431, 829 A.2d 1024 (2003) n. 10, the court cited with favor to cases from other jurisdictions, including *Helle v. Public Utilities Commission of Ohio*, 110 Ohio St. 434, 439, 161 N.E. 282 (1928), for the proposition that the trial court has an inherent power to amend the record to "make the record speak the truth." *Helle* involved an administrative agency involved in a quasi-judicial function. Therefore, so far as the Court of Appeals is concerned, courts and administrative bodies enjoy the same power to cause corrections.

None of this is recondite. The Maryland rule goes back at least 210 years: *Maryland Ice Co. v. Arctic Ice-Mach. Manuf'g Co.*, 30 A. 633, 635 (1894); *Duvall v. Wells*, 4 H. & MH. 114 (1798). Thirty years earlier, Blackstone said in his *Commentaries on the Laws of England, Proceedings in the nature of Appeals, Book the Third, Chapter the Twenty-Fifth*, p. 406 (Yale Avalon Project on the Internet):

> But now, the courts are become more liberal; and, where justice requires it, will allow of amendments at any time while the suit is pending.

In sum, ALJ, MIA, and CSA all clearly enjoy the power to cause the correction of mistakes in the record. Here all claimed that they did not. But Maryland follows

> the elementary tenet of administrative law that an agency must either conform to its own precedents or explain its departure from them.[8]

---

[8] *International Union (UAW) v. N.L.R.B.*, 459 F.2d 1329, 1341 (D.C. Cir. 1972) (Skelly Wright, J.).

> An agency changing its course must supply a reasoned analysis indicating that prior policies are being deliberately changed, not casually ignored. . .[9]

Finally, and as noted, Maryland follows the rule the reviewing court cannot sustain an agency order except for the reasons stated by the agency. But here the reasons given by ALJ and MIA were faulty.

7. Section 2-215(h) of the Insurance Article, App. EE, pp. 106a-107a, which controls, prescribes six different standards of judicial review: (i) "violate constitutional provisions"; (iii) "are made by unlawful procedure"; and (iv) "are affected by other error of law." Petitioner relied on these, but CSA considered only the substantial evidence and error of law tests.

8. The terms "arbitrary" and "capricious" may fairly be said to have plain, albeit not yet perfectly defined, meanings. Thus, for example, in *Harvey v. Marshall*, 389 Md. 243, 302-304, 884 A.2d 1171 (2005), the court said that an agency decision may be arbitrary or capricious if it is:

> contrary to or inconsistent with the enabling statute's language or policy goals . . . . if it is irrationally inconsistent with previous agency decisions. . . . if similarly situated individuals are treated differently without a rational basis for such deviation.

Where words have a plain meaning, Maryland courts give effect to that meaning. *Motor Vehicle Administration v. Jones*, 380 Md. 164, 175-176, 844 A.2d 388 (2004). But here, CSA deferred to MIA's far narrower definition of the terms, as used in Sec. 27-303(2) and 27-304(15).

9. As to CSA's ruling that MIA has a general power to opt that its decisions will not have precedential effect,

---

[9] *Christopher v. Department of Health*, 381 Md. 188, 209, 215, 849 A.2d 40 (2004).

the facts are as follows: MIA had asserted a right under COMAR rule 31.02.01.10-2.H (Effect of Summary Affirmance) to make its decision nonprecedential. But, by its terms, 10-2.H operates only when MIA does not discuss the facts and law. Petitioner argued to CSA that MIA did discuss facts and law. MIA counsel so admitted, brief p. 23. Thus MIA's reliance on 10-2.H was error. CSA did not rely on 10.2.H. It ruled that there is no right to a precedential decision; otherwise put, that MIA enjoys a general power to render a nonprecedential decision any time it pleases.

As noted, in Maryland, *Burlington Truck* bars a reviewing court from upholding an agency order unless the order is sustainable on the agency's findings and for the reasons stated by the agency. But CSA supplied reasons for the conduct of the agency.

More importantly, *Mehrling*, pp. 64-65 requires administrative agencies to make meaningful findings of fact and to state reasons when rendering final decisions. Thus MIA enjoys the power (a) to make findings of fact and state reasons (b) to adopt the findings and reasons from the ALJD, and (c) to adopt some and make others. Under 10-2.H as written, all of these would have stare decisis effect. But 10-2.H claims a new power (d): to make decisions in which MIA neither expressly adopts the ALJ's legal analysis nor makes its own legal analysis. Rule 10-2.H purports to authorize MIA to decide cases without making the meaningful findings of fact and without stating reasons required under *Mehrling*.

Third, Maryland has a general rule, *Motor Vehicle Administration v. Shepard*, above, 399 Md. p. 254, that

> We should avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense.

Statutes should be read so that no sentence is rendered "surplusage, superfluous, meaningless, or nugatory." *Ibid.* The same principles that govern the interpretation of statutes govern the interpretation of agency rules and regulations. *Christopher v. Department of Health,* above, 381 Md. p. 209. But the existence of a general power to make nonprecedential decisions renders 10-2.H if nothing else surplusage.

10. Long ago, in *Summers v. Mosely*, 2 Cr. & M. 477, 149 Eng. Rep. 849 (1834), the court found that a subpoena duces tecum did not require the presence in the forum of the person to whom it was addressed. This Court agreed: *Wilson v. U.S.*, 221 U.S. 361, 373-374 (1911); *Essgee Co. v. U.S.*, 262 U.S. 151 (1923). This issue has never been raised in reported Maryland decisions. But, as noted, the ALJ found that a subpoena duces tecum requires the appearance in the forum of the individual to whom it was addressed, and further that his inability to be present excused the Company's nonproduction of the subpoenaed items.

11. Despite the *Burlington Truck* rule GEICO's counsel said, brief to CSA p. 8, of the certified mail return receipts for the subpoenas addressed to Ms. Krech and GEICO vice-president Pushman,

> They were not signed for by either Ms. Krech or Mr. Pushman as required regulation and as such, neither Ms. Krech nor Mr. Pushman were properly served with a subpoena. [sic]

CSA agreed with MIA that the Pushman subpoena was improperly served, but gave no reason. It did not invoke *Burlington Truck* as against GEICO. The service would be improper if, and only if, Ms. Vandevender lacked authority to receive the subpoena. But by accepting and signing for the document, Ms. Vandevender had knowingly and falsely represented to the mail deliverer that she had such authority. GEICO has thereby accused its own employee of a violation of 18 U.S.C. Sec. 1702 and 1708, App. II and JJ, pp. 112a-114a, which subject to fine and imprisonment whoever takes mail from a mail deliverer with knowledge that the person lacks authority to do so. See, e.g., *U.S. v. Palmer*, 864 F.2d 524, 526 (7th Cir. 1988), *cert. denied*, 490 U.S. 1110. CSA agreed with GEICO.

REASONS FOR GRANTING THE PETITION

Initially, Petitioner submits the table of authorities of his main brief to the CSA, App. BB, pp. 97a-101a, to assist this Court in assessing CSA's statement that Petitioner argued "without reference to any authority and without any factual basis to support his allegations." More broadly, he understands CSA's disparagement of his arguments as a statement that CSA regards him as a disfavored litigant.

Judicial rules that unreported decisions cannot be cited as either precedent or persuasive authority discourage the public from wasting its time by reading those decisions. As shown here, the rules allow for a judicial practice of creating bodies of law, diametric departures from reported rules of decision. It may fairly be said that those departures are functionally equivalent to a secret law, to be applied to disfavored

litigants. It is inconceivable that Petitioner is the only disfavored litigant in Maryland, or in the United States. Instead, this case differs from many others only in that here at all stages, Petitioner demonstrated the departures at the previous level, and he thereby occasioned an administrative and judicial response: still further departures from precedent.

By its creation of FRAP Rule 32.1, this Court has shown awareness that there exists a judicial practice of unreported rules of decision. The magnitude of the practice will only become known when the legal community — scholars, law schools, and bar associations — begin to scrutinize the unreported decisions in Maryland and other states. By granting certiorari here, and airing CSA's practices, this Court will engender an interest in the legal community and hasten the examination of unreported decisions in all states. That examination will help bring the practices complained of here to an end. Thus this case is an ideal vehicle for advancing the principles of equal protection, fairness, and predictability.

This Court has granted review where little money is involved, *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and where the underlying merits are unclear, *Peralta v. Heights Medical Center*, 485 U.S. 80, 86-87 (1988).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court to grant the writ of certiorari herein to the unreported opinion of the Maryland Court of Special Appeals.

Respectfully submitted,

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Petitioner Pro Se.

Supreme Court, U.S.
FILED

081020 FEB 6 - 2009

OFFICE OF THE CLERK

No. 119 (2)

IN THE

SUPREME COURT OF THE UNITED STATES

WILBUR H. FRIEDMAN, JR.,

Petitioner,

v.

MARYLAND INSURANCE ADMINISTRATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF SPECIAL APPEALS OF MARYLAND

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Page

TABLE OF CONTENTS

APPENDIX A — Order of Court of Appeals of Maryland, denying motion for reconsideration (November 12, 2008) 1a

APPENDIX B — Order of Court of Appeals of Maryland, denying petition for writ of certiorari (Aug. 26, 2008) 2a

APPENDIX C — Opinion of the Court of Special Appeals of Maryland (May 14, 2008) 3a

APPENDIX D — Order of Circuit Court for Montgomery County, Maryland affirming the ALJ and MIA decisions (entered June 22, 2007) 26a

APPENDIX E — Final Order of Maryland Insurance Administration (Feb. 5, 2007) 27a

APPENDIX F — Proposed Decision of of Administrative Law Judge of the Maryland Office of Administrative Hearings (Dec. 26, 2006) 37a

APPENDIX G — Excerpts From Complainant Wilbur H. Friedman's Exceptions to Findings, Rulings, Recommendations and Omissions of Administrative Law Judge 46a

APPENDIX H — Excerpt from Petitioner's Motion to ALJ To Make Certain Explicit Findings And to State Reasons for Certain Rulings in ALJ Decision, December 12, 2006 . . . . . 48a

APPENDIX I — Excerpts from Transcript of December 5, 2006 Hearing Before an ALJ of the Office of Administrative Hearings 50a

APPENDIX J — Excerpt from Respondent GEICO's Motion To Protect As To Complainant's Discov-

Page

ery And Subpoena Requests And Motion To Quash Subpoena (filed Nov. 16, 2006) 53a

APPENDIX K — Excerpt from Certified Mail Receipt of Letter from Office of Administrative Hearings Addressed to David Pushman, 1 GEICO Boulevard, Fredericksburg, VA 22412 and Signed by Amy Vandevender on November 13, 2006 ..... 56a

APPENDIX L — Excerpt from Certified Mail Receipt of Letter from Office of Administrative Hearings Addressed to Christinia Krech, 1 GEICO Boulevard, Fredericksburg, VA 22412 and Signed by Amy Vandevender on November 13, 2006 ..... 59a

APPENDIX M — Excerpt from Petitioner's November 6, 2006 Request to Office of Administrative Hearings to Serve Subpoenas 62a

APPENDIX N — Letter from John Edmonds, Continuing Claims Supervisor, at Fredericksburg to Petitioner, Denying Petitioner's Request for Discovery, November 2, 2006 ..... 67a

APPENDIX O — Excerpt from Letter from Petitioner to Vice-President Pushman at GEICO, Requesting Discovery, November 1, 2006 ..... 69a

APPENDIX P — Excerpt from Notice of Hearing and Attachment From Office of Administrative Hearings to Petitioner, October 11, 2006 ..... 71a

APPENDIX Q — Excerpt from Transcript of Criminal Proceeding Hearing in Maryland District Court, August 31, 2006 ..... 73a

Page

APPENDIX R — Excerpt from Notice of Hearing and Attachment from Maryland Insurance Administration to Petitioner and GEICO, October 4, 2006 ..... 76a

APPENDIX S — Excerpt from "Notice of Request for Hearing and Final Determination" from Maryland Insurance Administration to Vice-President Pushman and Petitioner, September 20, 2006 ..... 78a

APPENDIX T — Excerpt from Statement in Support of Petitioner's Request for Hearing to Maryland Insurance Administration, August 14, 2006 Letter to MIA. 80a

APPENDIX U — Excerpt from Letter from Maryland Insurance Administration to Petitioner and GEICO, July 25, 2006 ..... 82a

APPENDIX V — Excerpt from GEICO's Regional Liability Director Herbert's July 13, 2006 Letter to Maryland Insurance Administration, Responding to Maryland Insurance Administration's July 6 Letter to Vice-President Pushman 84a

APPENDIX W — Excerpt from Letter from Maryland Insurance Administration to Vice-President Pushman, Requesting Information About the Collision, July 6, 2006 ..... 86a

APPENDIX X — Extract from Petitioner's June 23, 2006 Letter to Maryland Insurance Administration Complaining of GEICO's Failure to Pay his Claim 88a

Page

APPENDIX Y — Excerpt from Press Release by GEICO dated March 1, 2007, Concerning Vice-President Pushman's Future Retirement and GEICO's Operations 90a

APPENDIX Z — Affidavit dated February 1, 2008 by GEICO Vice-President Stewart about Vice-President Pushman 91a

APPENDIX AA — Office of Administrative Hearings Ruling on Motion To Reopen the Record in *Simon Moskowitz v. Maryland Department of the Environment*, OAH No. MDE-LHD-055-06-48463, May 18, 2007 ..... 93a

APPENDIX BB — Excerpts from Petitioner's Main Brief to Court of Special Appeals of Maryland, *Wilbur H. Friedman v. Maryland Insurance Administration*, No. 01054 (Pages iii and iv)..... 97a

APPENDIX CC — Excerpts from Maryland Insurance Article, Title 27, Subtitle 3 ..... 102a

APPENDIX DD — Maryland Insurance Article, Section 2-210(a)(2) and (c)..... 105a

APPENDIX EE — Excerpts from Maryland Insurance Article, Section 2-215 ..... 106a

APPENDIX FF — Excerpts from Maryland State Government Article, Sections 9-1602, 9-1603, 9-1604..... 108a

APPENDIX GG — Maryland State Government Article, Section 10-206(a)..... 110a

APPENDIX HH — Corporations and Associations Article, Sec. 2-414..... 111a

Page

APPENDIX II — 18 U.S.C. Section 1702. Obstruction of Correspondence.....112a

APPENDIX JJ — Excerpt from 18 U.S.C. Section 1708, Theft Or Receipt Of Stolen Property Generally.....114a

APPENDIX A

IN THE
COURT OF APPEALS OF MARYLAND

Petition Docket No. 215

September Term, 2008

(No. 1054, Sept. Term, 2007,
Court of Special Appeals)

WILBUR H. FRIEDMAN

v.

MARYLAND INSURANCE ADMINISTRATION, et al.

ORDER

The Court having considered the motion for reconsideration filed in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion for reconsideration be, and it is hereby, denied.

/s/ Robert M. Bell
Chief Judge

DATE: November 12, 2008

APPENDIX B

IN THE
COURT OF APPEALS OF MARYLAND

Petition Docket No. 215

September Term, 2008

(No. 1054, Sept. Term, 2007,
Court of Special Appeals)

WILBUR H. FRIEDMAN

v.

MARYLAND INSURANCE ADMINISTRATION, et al.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: August 26, 2008

APPENDIX C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1054

September Term, 2007

WILBUR H. FRIEDMAN

v.

MARYLAND INSURANCE
ADMINISTRATION ET AL.

Davis,
Getty, James S. (retired,
specially assigned),
Wenner, William W. (retired,
specially assigned),

JJ.

Per Curiam

Filed: May 14, 2008

Appellant, Wilbur H. Friedman, *pro se*, files this appeal from an order of the Circuit Court for Montgomery County (Pincus, J.) that affirmed the previous decisions of the Maryland Insurance Administration (MIA) and the Administrative Law Judge (ALJ). In May of 2006, appellant was involved in an automobile accident that resulted in property damages to his vehicle. Appellant promptly filed a claim with the Government Employees Insurance Company (GEICO), the other driver's insurance company. GEICO investigated appellant's claim and concluded that appellant's passenger was at fault; therefore, GEICO denied legal liability for the damages.

Per appellant's request, the matter was referred to the MIA to assess the reasonableness of GEICO's denial. After reviewing the information gathered during the course of GEICO's investigation, the MIA concluded that GEICO's denial was neither arbitrary or capricious and that there was no violation of laws prohibiting unfair claims settlement practices.[1]

Appellant challenged the MIA's determination and the matter was referred to an ALJ. The hearing before the ALJ on December 5, 2006 was conducted solely to review whether GEICO's conduct towards appellant was unreasonable. After reviewing the evidence, the ALJ issued a proposed decision affirming the MIA.

---

[1] "It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to" . . . "refuse to pay a claim for an arbitrary or capricious reason based on all available information." Md. Code Ann. (1997, 2007 Repl. Vol.), Ins. §27-303(2).

Appellant filed eleven exceptions to the ALJ's proposed decision. The Commissioner,[2] in a final order dated February 5, 2007, summarily affirmed the ALJ's proposal and detailed the ruling on each of the exceptions. Appellant subsequently noted an appeal to the Circuit Court for Montgomery County. On June 18, 2007, the circuit court upheld the ALJ and MIA decisions.

In this appeal, appellant poses the questions, which we have rephrased and consolidated as follows:[3]

---

[2]The Commissioner controls and supervises the MIA. Md. Code Ann. (1995, 1997 Repl. Vol.), Ins. § 2-101(c).

[3]Appellant's original questions were submitted in the form of statements as follows:

(1) COMAR rule 31.02.01.10-2.H (Effect of Summary Affirmance) is invalid on its face as (1.1) beyond the power of the Maryland Insurance Administration (MIA) to make, (1.2) arbitrary and/or capricious, and (1.3) a denial of due process and/or equal protection;

2. MIA, to the prejudice of Complainant, departed from its own rule by failing to make its decision herein one with precedential effect;

3. MIA has implemented a conclusive presumption, one in direct conflict with the statutory commands of Secs. 27-301 ff. of the Insurance Article and Sec. 17-103(b)(2) of the Transportation Article;

4. MIA implemented its conclusive presumption above by refusing to discredit a witness, the GEICO claims agent, and by ruling irrelevant evidence as would further discredit her;

(5) MIA improperly made findings of fact and conclusions of law based on an unlawful and unconstitutional procedure;

(6) MIA improperly disclaimed power both to correct errors in the transcript and to remand the case to [the Office of Administrative Hearings (OAH)] for the ALJ to make the corrections;

(7) MIA [wrongly] found improper the service of a subpoena on a vice-president of GEICO.

[footnote continued]

1. Did the MIA err in finding no violation of laws prohibiting unfair claims settlement practices?

2. Did the MIA err in excluding evidence?

3. Did the MIA err when it issued a final order without precedential effect within the rule of *stare decisis*?

We answer each of the questions in the negative. The MIA properly concluded that GEICO's actions were reasonably based on the information learned through its investigation. Evidence that was irrelevant to the subject matter of the proceeding was properly excluded from the administrative proceedings. Finally, appellant has no right to a final order with precedential value. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

In May of 2006, appellant was involved in an automobile accident in Rockville, Maryland. The accident occurred while appellant was stopped on the side of a single lane, private road where he was dropping off passengers at a restaurant, located in the Ritchie Shopping Center. As Martin Segal,[4] the rear seat passenger, prepared to step out, a vehicle operated by Vinh Phuc Nguyen struck the rear passenger door of appellant's vehicle. The collision occurred as Nguyen was attempting to pass around appellant's stopped vehicle.

Appellees, Maryland Insurance Administration (MIA), proceeding on behalf of the Maryland Insurance Commissioner (Commissioner), and Government Employees Insurance Company (GEICO), have filed separate appellate briefs.

[4]Martin Segal is sometimes referred to in the record as "Marty Segal."

Appellant promptly filed a claim with Nguyen's automobile insurance provider, GEICO, to recover property damages in the amount of approximately $1,600. Christina Krech, a GEICO claims examiner, was assigned to ascertain the extent of Nguyen's legal liability in order to evaluate GEICO's obligation to cover the damages. As part of her investigation, Krech interviewed appellant, Segal and Nguyen. Each of these witnesses offered substantially similar statements. Nguyen told Krech that, as he approached appellant's vehicle, he was unaware that there were any passengers inside and believed it was safe to maneuver around the parked car. All of a sudden, the rear door was opened and the collision occurred. He claimed that he had no opportunity to avoid the accident. Based on Nguyen's account, Krech designated the claim as a disputed liability and continued the investigation by interviewing the other two witnesses. Appellant provided an analogous version. Appellant told Krech that he was dropping passengers off at a restaurant when his vehicle was suddenly struck. Segal, the passenger who opened the door, added in an e-mail correspondence with Krech, that he was "eager to eat" and that the accident was "instantaneous." Statements from these witnesses lay the foundation for Krech's determination that appellant's passenger was contributorily negligent in causing the accident.[5] By letter dated May 25, 2006, GEICO denied appellant's claim, explaining that it is only obli-

---

[5] Pursuant to §21-1105(a) of the Transportation Article, which provides that

> [a] person may not open the door of a motor vehicle on any side available to moving traffic unless:
>
> (1) It is reasonably safe to do so; and
>
> (2) It can be done without interfering with the movement of other traffic.

Md. Code Ann. (1977, 2007 Supp.), Transp. §21-1105(a).

gated to pay damages for which its insured is legally liable. Appellant's claim was denied because it was determined that his passenger was at fault.

A. The Administrative Complaint [6]

On June 22, 2006, appellant filed an administrative complaint with the MIA, in which he collaterally disputed the denial of his claim on grounds that §21-1105(a), *supra*, is not applicable to private roadways. The Regional Liability Director of GEICO, Robert Herbert, immediately responded by informing appellant that provisions of Title 21 of the Transportation Article are applicable to "any private property that is used by the public,"[7] which encompasses the roadway running through the public shopping center where the accident occurred.

Appellant raised only one other ground for challenging GEICO's determination. The primary claim in appellant's complaint alleged an unfair claims settlement practice in contravention of Md. Code Ann., Ins. §27-303(2), by virtue of GEICO's denial of liability.[8] Section 27-303(2) is the statutory remedy relied on by appellant in the subsequent motions which are the genesis of this appeal. The MIA initiated an investigation and concluded that GEICO's conduct was neither arbitrary nor capricious.

---

[6] Appellant also filed a criminal complaint, charging Nguyen with criminal negligent driving. In a trial conducted in the District Court of Maryland for Montgomery County on August 31, 2006, Nguyen was found "not guilty." The trial judge informed appellant that he could file a civil action in the district court to seek monetary damages. No civil suit has been filed as of this date.

[7] Md. Code Ann., Transp. §21-101.1(b)(1) (1994).

[8] *See*, *supra*, note. 1.

Appellant challenged the MIA's determination and the matter was referred to the Office of Administrative Hearings (OAH). A hearing was scheduled before an ALJ.[9] In preparation for the hearing, appellant served requests for production of documents on David R. Pushman, Vice-President of GEICO.[10] GEICO informed appellant, by letter, that it refused to honor his discovery requests because it was not accompanied by a subpoena. Days later, appellant requested the OAH to serve a subpoena *duces tecum* on Pushman and a subpoena *ad testificandum* on Krech, the GEICO claims examiner, and Nguyen. All of the subpoenas were served.

GEICO again refused to honor the discovery requests because it claimed they were procedurally defective, unduly burdensome and irrelevant. GEICO explained that, because Pushman was out on extended sick leave at the time of service, his absence rendered the subpoena ineffective. The subpoena was directed to Pushman, rather than to GEICO; therefore, personal service was required. The return of service, however, indicated that someone other than Krech and Pushman received the summons.[11] Aside from procedural errors, GEICO claimed that production of the requested materials was unduly burdensome, irrelevant and overbroad. There were twenty-four, separately numbered, document requests for information concerning other claims filed with GEICO, unrelated to the accident in question.

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[9] The MIA referred the matter to the OAH for a hearing with a delegation of authority for proposed findings of fact.

[10] Pushman works at the GEICO office in Fredericksburg, Virginia, which handles all Maryland claims.

[11] *See* Md. Regs. Code tit. 31, 02.01.06 (1997).

GEICO moved to quash the subpoena on Pushman accordingly.

B. The Administrative Hearing

At the hearing on December 5, 2006, the ALJ quashed the subpoenas on grounds that they were irrelevant to the subject matter of the proceedings. For the same reason, the ALJ denied appellant's motion requesting to submit a transcript of Nguyen's criminal trial and barred Nguyen's live testimony. The scope of the hearing was limited to appellant's claim that GEICO's denial constituted an unfair claims settlement practice in violationof §27-303(2) of the Insurance Article, *supra*, and, accordingly, the ALJ precluded evidence not relevant thereto. To determine any unfair claims settlement practices, the ALJ reviewed GEICO's investigation to determine whether GEICO obtained information on which it could reasonably rely in denying appellant's claim. A summary of the evidence introduced at the hearing, enumerated in the ALJ's proposed decision, included the following documents:

1. Letter from [appellant], received by the MIA on June 26, 2006
2. Letter from the MIA to [GEICO], dated July 6, 2006
3. Letter from [appellant], received by the MIA on July 7, 2006
4. Letter from [appellant], received by the MIA on July 11, 2006
5. Letter from [GEICO] to the MIA, received July 17, 2006 with attachments
6. Letter from the MIA to [appellant], dated July 25, 2006

7. [Appellant's] request for a hearing, received by the MIA on August 17, 2006
8. Letter from [appellant], received by the MIA on September 6, 2006
9. Letter from the MIA to [GEICO], dated May 17, 2006

On behalf of [appellant]: None

On behalf of [GEICO]:

1. Email to [appellant] from Marty Segal, dated May 21, 2006

Additionally, Krech, appellant's wife and Segal testified on behalf of appellant. GEICO adopted Krech's testimony elicited during appellant's case-in-chief.

On December 26, 2006, the ALJ issued a proposed decision, affirming the MIA and finding no violation of §27-303(2), *supra*. In reaching this conclusion, the ALJ credited the testimony of the claims examiner and held that GEICO conducted a reasonable investigation from which it determined that appellant's passenger was at fault.

C. The Commissioner's Final Order

Aggrieved by the ALJ's proposal, appellant filed eleven exceptions[12] and moved to correct errors in the transcript with the MIA. GEICO responded to each of the exceptions. In a Final Order dated February 5, 2007,

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[12] Pursuant to §10-220(a) of the State Government Article, "[i]f the Office conducts a hearing under this subtitle, the Office shall prepare proposed findings of fact, conclusions of law, or orders in accordance with the agency's delegation under §10-205 of this subtitle." Md. Code Ann., State Gov't §10-220(a) (1993).

the Commissioner summarily affirmed the ALJ's determination and thoroughly addressed each noted exception. The Commissioner described appellant's exceptions as "labyrinthe and often times confusing" and pointed out that appellant "has consistently demonstrated through the voluminous papers filed in this matter an injudicious belief that he can force an insurer to pay his claim by using the Maryland Insurance Administration as a weapon." Additionally, the Commissioner stated that "it is most unfortunate that [appellant] has not sought to litigate his factual dispute in the appropriate forum" and noted appellant's misunderstanding of the administrative process as demonstrated by appellant's misplaced attempts to litigate legal liability. Appellant's "repeated attempts to litigate the occurrence as the basis of his claim that GEICO's actions were arbitrary and capricious display a total lack of understanding of the evidence necessary to sustain his complaint." The Commissioner informed appellant that the appropriate forum for determining fault and obtaining monetary redress is a court of law, not a hearing before an administrative body. Nevertheless, each of appellant's exceptions were fully addressed.

On the motion to correct errors in the transcript, the Commissioner stated that the MIA lacked authority to alter an official transcript where the proposed changes were not substantive and where changes were requested without any supporting authority other than appellant's personal recollection. He added that "appellant asks the MIA to take on faith that his recollection of the proceedings is somehow superior to the tape recording or memory of other attendees."[13]

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[13] Appellant raises the same argument in this appeal, which we reject for the same reasons that his motion to correct errors

[footnote continued]

The Commissioner upheld the ALJ's determination that the discovery requests were unduly burdensome and irrelevant to the proceeding, which was narrowly focused on reviewing the manner in which GEICO handled appellant's claim. The subpoena *duces tecum*, setting forth twenty-four separately numbered document requests, was burdensome on its face. Furthermore, the subpoena was not directed to the custodian of records or to a corporate officer, but rather to Pushman individually. The Commissioner stated that, even if the subpoena had been served "it would have been quashed as being oppressive, burdensome and a request for irrelevant documents." The Commissioner then reprimanded appellant for his "scurrilous suggestion" that Krech committed perjury "based upon his interpretation of information contained on GEICO's website," which the Commissioner felt was indicative of "how totally subjective [appellant's] approach to this matter ha[d] become." Likewise, appellant's exception to the ALJ's refusal to allow Nguyen to testify was also found to be without merit as any testimony that might have been offered would not have been germane to the issue.

As far as appellant's assertion that the ALJ committed a "constitutional tort" in preventing him from disputing liability, the Commissioner characterized that allegation as "absurd." Because appellant failed to show any arbitrary or capricious action directed at him, the statutory remedies do not "inure to his benefit."

In another exception, appellant argued that the ALJ failed to admit into the record certain documents. On

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in the transcript was denied. The motion was rejected because the errors claimed were not substantive and, even if they were, appellant failed to cite any authority.

that exception, the Commissioner commented that it was "totally devoid of substance" as he pointed out that, during the hearing, the ALJ asked appellant whether there were any documents that he wished to move into evidence. Appellant responded that there were not any, but later argued that the ALJ should have advised him of procedural issues. The Commissioner responded that appellant could not be rewarded for his "naivete" of the rules of administrative procedure.

The ALJ's refusal to allow an untimely motion following the close of the hearing was another topic of appellant's exceptions. That exception was rendered moot since all of the requests within the untimely motion were made part of the record.

Appellant was admonished several times regarding his "unrelenting demand" to litigate liability and that issue was disposed of in a litany of motions.[14] Appellant's focus on legal liability and his presentation of "disparaging conclusions" that were "unsupported by the record" fell short of satisfying his burden of proof. Because appellant "has twice selected the wrong forum to air his grievance," the Commissioner recommended that appellant "accept the reality of his predicament that reasonable minds can disagree." Finally, the Commissioner concluded that "[its decision] is not precedent within the rule of *stare decisis* in other cases."

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[14] One of appellant's arguments related to the ALJ's refusal to allow the transcript of Nguyen's criminal trial. The Commissioner observes that appellant raises the exception by asking the following rhetorical question: "How can the relevance of the [criminal] transcript and relevance by [sic] doubted?" The Commissioner remarks that the answer to the question is "self-evident" and unworthy of a lengthy explanation since other exceptions were discussed at such great length.

D. The Circuit Court

Appellant obtained judicial review of the Commissioner's Final Order in the Circuit Court for Montgomery County. By written Order dated June 18, 2007, the circuit court upheld the ALJ and MIA decisions. Thereafter, appellant noted the instant appeal.

Since initiating this appeal, appellant has filed two separate motions with this Court. First, he requested that we take judicial notice of the facts contained in an affidavit dated February 1, 2008 from the Vice President of GEICO's Human Resources Department. We denied that motion by a separate Order. In another motion, appellant requests that the MIA be judicially estopped from challenging the introduction of evidence related to the status of Pushman. That motion is denied for reasons that will be addressed in this opinion, *infra*.[15]

Additional facts will be provided as necessary.

LEGAL ANALYSIS

Due to the voluminous caseload brought by *pro se* litigants each year, we begin this opinion by reiterating the sentiments expressed by the Court of Appels many years ago to the effect that "we find ourselves becoming somewhat less considerate of the plight of litigants whose obligation to know and comply with the Rules, at least in theory, is no less than that of the attorneys

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[15]GEICO has also filed a motion with this Court in response to errors found in appellant's reply brief. We granted GEICO's motion to strike documents contained in the appendix of the reply brief because those documents were not part of the original record. *See* Md. Rule 8-501(f).

they retain to represent them." *Lewis v. Germantown Ins. Co.*, 251 Md. 535, 537 (1968). Our adversarial system requires a mastery of evidentiary rules and the rules of procedure, the burdens of proof and production as well as the myriad causes of actions and the proper venues for litigating them. *Tretick v. Layman*, 95 Md. App. 62 (1993). Those rules apply equally to *pro se* litigants and, accordingly, we hold *pro se* litigants accountable for their knowledge of those rules. *Id.*

A lack of knowledge of these procedural rules often disrupts the judicial process. In this appeal, appellant makes the same arguments that were thoroughly addressed by the ALJ and the MIA and that were later affirmed by the circuit court. Many of those arguments were found to be meritless as they were unsupported by legal authority. Appellant makes those arguments, often in an incomprehensible and disjointed manner, without reference to any authority and without any factual basis to support his allegations. By continuing to raise these unsupported arguments, appellant is abusing the judicial process and dissipating judicial resources.

Furthermore, on numerous occasions, appellant resorts to *ad hominem* attacks on GEICO, its claims examiner and the administrative agencies that have reviewed his claims. In appellant's view, the administrative agencies are acting in dereliction of their duties and are engaging in a scheme to facilitate and defend the unsound practices of large insurance companies. Consistently throughout his brief, appellant makes unsubstantiated, conclusory accusations. Of paramount consequence, however, is appellant's misinterpretation of the confines of our standard of review. Even though he properly articulates that standard, his various arguments consistently ask us to transcend those parameters.

In reviewing adjudicatory decisions of administrative agencies, we apply the same standard utilized by the circuit court; therefore, we review the decision of the administrative agency, not the decision of the circuit court. *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 57 (2002), (quoting *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495 (2001)). The standard restricts courts to view the record for the purpose of determining whether there is substantial evidence to support the agency's factual findings and whether the agency's conclusions are premised on erroneous conclusions of law. *Nationwide Mut. Ins. Co. v. Ins. Comm'r*, 67 Md. App. 727, 737 (1986) (quoting *Lumbermen's Mut. Cas. v. Ins. Comm'r*, 302 Md. 248, 266 (1985)); *see also Montgomery v. E. Corr. Inst.*, 377 Md. 615, 625 (2003) (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994)); Md. Code (1984, 1995 Repl. Vol.), State Gov't §10-222(h). Factual determinations are supported by substantial evidence if, when viewed as a whole, "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Nationwide Mut. Ins. Co.*, 67 Md. App. at 737 (quoting *Lumbermen's Mut. Cas.*, 302 Md. at 266). The reviewing court must be careful not to substitute its own judgment for that of the administrative agency. *Id.*; *see also Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628, 653 (2002).

With regard to legal conclusions, deference is given to the administrative agency's conclusions. *Montgomery v. E. Corr. Inst.*, 377 Md. at 625-26; *see also Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999). Administrative agency are entitled to deference as to their interpretation of statutes that they are charged with administering. *Montgomery v. E. Corr. Inst.*, 377

Md. at 625-26; *see also Lussier v. Maryland Racing Comm'n*, 343 Md. 681, 696-97 (1996). Thus, a final order issued by an administrative agency is deemed *prima facie* correct and must be upheld where it is legally correct and reasonably supported by the record. *Nationwide Mut. Ins. Co.*, 67 Md. App. at 737.

I.
UNFAIR CLAIMS SETTLEMENT PRACTICES

Appellant initiated administrative proceedings before the MIA to review GEICO's conduct in denying his claim, which he alleged constituted arbitrary and capricious actions directed at him. In his Statement in Support of the Request for Hearing, he cited twelve reasons in support of his assertion that GEICO's determination to deny the claim was unfounded and he further alleged that "GEICO had a predetermined intent not to pay [his claim]." Unreasonable actions taken by insurance companies when denying a claim implicate §27-303(2) of the Insurance Article, *supra*; therefore, appellant proceeded under that statute throughout the administrative process. He raised no objections to the ALJ's reliance on §27-303(2) nor alleged the implication of any other statute. For the first time in this litigation, appellant alleges that GEICO's conduct constitutes a violation of §27-304 and §27-303(6) of the Maryland Insurance Article.[16] To the extent that appellant invokes other statutory provisions, those arguments are not preserved and have been waived. *See* Maryland Rule 8-131(a).

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[16]Section 27-303(6) mandates insurance companies to provide, upon request, a reasonable explanation for the denial of a claim. Md. Code Ann. (1997, 2007 Repl. Vol.), Ins. §27-303(6). Section §27-304 prohibits bad faith business practices. Md. Code Ann. (1997, 2007 Repl. Vol.), Ins. §27-304.

An arbitrary and capricious decision, under §27-303(2), means "(1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of 'all available information.' " *Berkshire Life Ins. Co.*, 142 Md. App. at 671 (quoting *Gabler v. American Mfr.*, "Order of Remand" at 6-7, MIA No: 60-7/97 (March 11, 1998)). The arbitrary and capricious standard is a heftier burden than the preponderance of the evidence standard imposed in civil lawsuits. *Berkshire Life Ins. Co.*, 142 Md. App. at 671.

GEICO's claim log, correspondence regarding the claim and recorded statements from witnesses were carefully reviewed by the MIA and the ALJ. Testimony from the claims examiner, appellant's wife and Segal were also factored into the consideration. The evidence indicated that appellant's passenger opened the vehicle door into a lane of moving traffic when it was unsafe to do so. In our review of the administrative proceedings, we perceive no abuse of discretion in finding that GEICO acted reasonably on the available information. Accordingly, we conclude that a reasonable person could, on that evidence, agree with both the MIA and ALJ that there was sufficient evidence to support GEICO's denial.

Evidently, appellant expected the ALJ and MIA to conduct a trial and to assess the credibility of the witnesses. It is beyond the authority of these administrative bodies to adjudicate tort claims and to aware monetary damages under an administrative action initiated for the purpose of determining the reasonableness of an insurance company's actions. These fora were not proper for the type of redress sought by appellant. The ALJ and MIA were confined to reviewing the information that weighed in GEICO's denial. Anything beyond that

information was irrelevant to the administrative proceedings. Appellant was repeatedly informed that an administrative proceeding was the improper forum. Yet, he continued to press his grievance that GEICO acted arbitrarily and capriciously. Due to the forum in which appellant proceeded, he shouldered a heavier burden than he would have if he had proceeded with a civil claim. *See Berkshire Life Ins. Co.*, 142 Md. App. at 671. Because *pro se* litigants are held to the same standards, appellant is not exempt from having to sustain the burden required under the action brought.

II
EXCLUSION OF EVIDENCE

Appellant's misunderstanding of the limited and narrow purpose of the administrative proceedings is the primary reason many of his arguments are rejected in this appeal. Several arguments relate to the exclusion of evidence from the record. Appellant begins by stating that "[a]n agency following applicable precedent would have found that the evidence [appellant] sought to introduce was all relevant." It is unclear to what applicable precedent appellant is referring, except that he superficially references Supreme Court Justice Ginsburg's dissenting opinion in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). By referring to the unlawful practices of State Farm, appellant is implying that deceitful practices are widespread throughout the insurance industry. It is a nonsensical notion to apply generalizations about a wholly different entity and to draw inferences about GEICO's practices without any particularized facts that logically lead to that conclusion. More importantly, these allegations have no bearing in this appeal. We are not a trial court and we have

already discussed, *supra*, our limited role and the applicable standard of our review.

Appellant, nonetheless, contends that the evidence was relevant to show that the claims examiner was committing perjury when she testified that GEICO did not have any procedure manuals on how to handle claims. To make his point, appellant refers to information on GEICO's website to demonstrate the breadth of GEICO's business as a basis for drawing an inference that there must be some standard procedure implemented by such a large company. Appellant then alleges that "[t]here is but a single reason why these business units would deny the existence of instructions: to avoid disclosure of the instructions to litigants and regulators." Aside from having no basis for drawing this conclusion, this information has no probative value in assessing the credibility of witnesses nor in determining the central issue of the case.

Appellant continues, contending that the "MIA would have followed applicable precedent if it had allowed the introduction of evidence showing that GEICO had a pattern of denying the liability of its insured." Again, GEICO's dealings with other customers was not the issue. The MIA was tasked with keeping the proceedings narrowly focused on GEICO's conduct in handling appellant's claim, specifically, whether GEICO acted arbitrarily and capriciously in finding that appellant was contributorily negligent.

The ALJ rejected several attempts by appellant to submit evidence that was not germane to the proceedings. Another such maneuver was appellant's motion to submit a transcript of Nguyen's criminal trial. The significance of the transcript from appellant's perspective was that it was necessary to establish legal liability and to

litigate a claim for monetary damages; however, as we have already discussed, *supra*, that purpose deviates from the issue central to the ALJ proceeding. For the same reasons, Nguyen's live testimony was precluded. Exclusion of this irrelevant evidence was proper. *See* Md. Code Ann. (1984, 1999 Repl. Vol.), State Gov't §10-213(d) (authorizing the officer, presiding over the administrative hearing, to exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious).

A. Post-Hearing Motions

Appellant claims that the exclusion of post-hearing motions for being untimely was "patent error." He cites the Code of Maryland Regulations 28.02.01.23,[17] which provides:

> The record shall include: (1) All pleadings, motions, reponses [sic], proposed orders, memoranda, including proposed findings of fact and conclusions of law, and requests filed by the parties . . . (3) All documentary and other tangible evidence received or considered.

Under this provision, appellant claims the right to introduce motions. As to the timing of the motions, appellant argues that, pursuant to the Code of Maryland Regulations 28.02.01.16B(1),[18] "[a] party may move for appropriate relief before or during a hearing." Appellant contends that there is "nothing about motions between the close of the hearing and the date the ALJ files his decision."

We disagree. As previously articulated by the Commissioner, this argument is "totally devoid of substance"

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[17]Md. Regs. Code tit. 28, §02.01.23 (2008).

[18]Md. Regs. Code tit. 28, §02.01.16B(1) (2008).

and we conclude that it is unpreserved for appellate consideration. The ALJ asked appellant whether he wished to move any other evidence into the record and appellant declined. Thus, appellant may not assign error to the exclusion of that evidence on appeal.

B. Subpoenas

Appellant, after noting this appeal, filed a motion requesting this Court to judicially estop the MIA from contesting the introduction of evidence related to the status of Pushman. In his motion, appellant argues that

> [t]he issue here is whether [a]ppellees MIA and GEICO are judicially estopped from contesting the introduction of three documents before the panel that will review the MIA's administrative decision herein where, after excluding evidence relevant to the issue, MIA made rulings based upon the representations of GEICO [sic] counsel — there was never any evidence whatsoever — and the documents [appellant] seeks to introduce contain the only facts relevant to the ruling. The documents are:
>
> > An extract from MIA's examination of GEICO, dated December 31, 2004, which states that Mr. David H. Pushman is a vice-president and a "principal officer" of GEICO, Rep.App. p. 1 and 2.
> >
> > A statement on the GEICO website, dated September 12, 2006, that Ms. Nance Pierce replaced Mr. Pushman as "head" of GEICO's Middle Atlantic Operations, Rep.App. p. 3.
> >
> > An [sic] February 1, 2008 affidavit from GEICO's Vice-President Jan C. Stewart, which, when read in conjunction with the GEICO pleading which contained it, says that Mr. Pushman never returned to work after June 27, 2006.

These documents are significant to appellant because, in his view, they demonstrate that GEICO misrepresented "that the subpoena arrived after Mr. Pushman had left work." We deny appellant's motion because the point is moot. "Even if the subpoena had been served," the Commissioner stated that, "it would have been quashed as being oppressive, burdensome and a request for irrelevant documents." We agree and, accordingly, hold that there was no abuse of discretion in excluding evidence, denying post-hearing motions or quashing subpoenas.

III
STARE DECISIS

Appellant alleges that the Code of Maryland Regulations 31.02.01.10-2.H(1)[19] "is unlawful on it's face" and that "MIA has committed a constitutional tort" in denying him due process of law. The applicable provision of the Maryland Administrative Code provides that "[i]f the Commissioner issues a final order that summarily affirms the proposed order of an administrative law judge *without* discussing the facts and legal issues and without expressly adopting the administrative law judge's legal analysis and proposed conclusions of law, neither the final order nor the proposed order is precedent within the rule of *stare decisis*."

Md. Regis. Code tit. 31,02.01.10-2.H(1) (emphasis added). Essentially, appellant argues that the inverse of the provision is also true. He claims that when the Commissioner's final order includes a discussion of facts and legal issues, the order must have precedential value within the rule of *stare decisis*.

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[19] Md. Regs. Code tit. 31, 02.01.10-2.H(1) (2008).

The fact that an agency's decision carries no precedential value has no impact on appellant's right to due process of law. When an order has no precedential value, the only effect is that it can not be used as authority for future cases. There is no right to a decision that has prospective effect. Unreported opinions of the Court of Appeals and of this Court have no prospective effect and are "neither precedent within the rule of *stare decisis* nor persuasive authority." Md. Rule 1.104 (emphasis added). There is no deprivation of rights involved when the opinion is unreported; likewise, appellant is not deprived of any right when the final order has no precedential effect.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

APPENDIX D

[Filed June 22, 2007]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY

Case No. 280097-V

WILBUR H. FRIEDMAN

Complainant

vs.

GEICO INSURANCE COMPANY

Licensee

ORDER

UPON CONSIDERSATION of the Memorandum of the Complainant and of the Licensee it is this 18th day of June, 2007

ORDERED, that the decision of the ALJ Rothenburg and the Maryland Insurance Administration previously entered is **AFFIRMED.**

/s/ S. Michael Pincus
JUDGE

APPENDIX E

MARYLAND INSURANCE ADMINISTRATION

REVIEW OF A RECOMMENDED DECISION ISSUED BY RICHARD F. ROTHENBERG AN ADMINISTRATIVE LAW JUDGE OF THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS

OAH No.: MIA-INS-CC-33-06-43902

MIA No.: MIA-2006-10-008

WILBUR H. FRIEDMAN

Complainant

v.

GEICO INSURANCE COMPANY

Licensee

FINAL ORDER

Pursuant to Md. Code Ann., Ins. §2-210(d) and COMAR 31.02.02.10-2H, the undersigned Associate Deputy Commissioner on behalf of the Maryland Insurance Commissioner, hereby issues this summary affirmance of the proposed decision below.

On December 5, 2006, this case was heard by Administrative Law Judge ("ALJ") Richard F. Rothenberg. On December 26, 2006 the ALJ issued a Proposed Decision, and on the same date the Office of Administrative Hearings mailed the Recommended Decision to Wilbur H. Friedman, the Complainant and to Gregory S. Fanshaw, Esq. counsel for GEICO INSURANCE COMPANY,

the Licensee. Attached to the Recommended Decision were the Appeal Rights advising all parties that pursuant to Md. Code Ann., State Gov't §10-220(2004) and COMAR 31.02.02.14, they were given an opportunity to file written exceptions with the undersigned, within twenty (20) days from receipt of the Recommended Decision.

Wilbur H. Friedman, Complainant, filed a series of eleven Exceptions to the "Findings Rulings, Recommendations and Omissions" of ALJ Rothenberg's Proposed Decision. In addition, Complainant filed a Motion to Correct Errors in Transcript, First Alternative Motion to Remand to ALJ to Correct Errors; Second Alternative Motion to Adopt other Just and Proper Procedure to Correct Errors in Transcript. Licensee responded to each of the Complainant's filings. On January 24, 2007, The Maryland Insurance Administration received Complainant Wilbur H. Friedman's Motion Requesting Leave to File Attached Reply Brief In Response to Respondent's January 18, 2007 "Response to Complainant's Motion To Correct Transcript and Motion To Remand to the ALJ and Exceptions to Rul[ings] and Recommendations of the ALJ." As to the latter Motion I have reviewed the Reply Brief and find that it lacks any probative value and restates the arguments made by Complainant in his voluminous pleadings that preceded this one. Accordingly, I shall deny this Motion.

Complainant's Motion to Correct Errors in Transcript; First Alternative Motion to Remand to ALJ To Correct Errors; Second Alternative Motion to Adopt other Just and Proper Procedure to Correct Errors in Transcript: Complainant, without any supporting authority, save *his* memory, requests the MIA to "correct certain errors in

the transcript of this case."[1] Complainant has offered no legal basis upon which the MIA has the power to change a record of a hearing before the OAH, and I do not believe any such authority exists. Even if it were possible to make the suggested "corrections" and alter the record, I have reviewed these changes and find that they are not substantive and would have no impact upon the final pronouncement in this matter. Complainant asks the MIA to take on faith that his recollection of the proceedings is somehow superior to the tape recording or memory of other attendees. I agree with Licensee's argument that "An official transcript of the matter cannot and should not be altered [to] fit the recollections of one or more of the parties."[2] Accordingly, I shall deny this Motion.

Complainant Wilbur H. Friedman's Exceptions to Findings Rulings, Recommendations and Omissions of Administrative Law Judge: Complainant has filed a labyrinthine and often times confusing series of eleven exceptions to the ALJ's findings and Proposed Order. Complainant has consistently demonstrated through the voluminous papers filed in this matter an injudicious belief that he can force an insurer to pay his claim by using the Maryland Insurance Administration as a weapon. It is most unfortunate that Complainant has not sought to litigate his factual dispute in the appropriate forum, and misunderstands the process that he has initiated. Complainant, having the burden of proof, has not established a violation of §27-303(2) of the Insur-

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[1] Complainant's Motion to Correct Errors, p. 1.

[2] Response to Complainant's Motion to Correct Transcript and Motion to Remand to the ALJ and Exceptions to Rule and Recommendations of the ALJ, p. 2.

ance Article, the only issue before the ALJ. The repeated attempts to litigate the occurrence as the basis of his claim that GEICO's actions were arbitrary and capricious display a total lack of understanding of the evidence necessary to sustain his complaint. I will discuss each of Complainant's Exceptions, seriatim,

Complainant first excepts to the ALJ's ruling quashing a subpoena *duces tecum* issued to David Pushman. The ALJ properly ruled on this issue. I have reviewed the document request attached to this subpoena and find that it is extremely burdensome and requests documents that would clearly be irrelevant to these proceedings.[3] The subpoena was not served on Mr. Pushman. Complainant did not address his subpoena to a records custodian or a corporate officer, but rather to an individual. He now complains of unfair treatment by the ALJ in this ruling, calling it "informal" as opposed to the "hyper technical" standard to which Complainant is held.[4] I find no substantiation of such discrimination in the record. The cases cited by Complainant in his Brief are simply not on point and do not support his position. What Complainant fails to recognize is that even if the subpoena had been served, it would have been quashed as being oppressive, burdensome and a request for irrelevant documents.

Complainant's second exception deals with the ALJ's ruling that the records sought by the subpoena *duces tecum* were not relevant. Again, Complainant fails to

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[3]The document request, totaling 24 in number over seven pages is burdensome on its face. Requests for information concerning claims other than Complainant's are completely irrelevant to his claim that he was singled out for arbitrary and capricious treatment by Licensee.

[4]Complainant's Brief in Support of Exceptions, p. 2.

comprehend the nature of the proceeding before the OAH. Only documents that relate directly to his complaint are relevant. Thus, only Complainant's request number 7 is appropriate, and to the extent these documents were relevant, they were made available at the time of the hearing. Complainant's scurrilous suggestion that Christiana Krech committed perjury based upon his interpretation of information contained on GEICO's website reveals how totally subjective Complainant's approach to this matter has become. I totally reject Complainant's premise that anyone who does not agree with Wilbur Friedman is not telling the truth. That individuals disagree with one another is human nature. If Complainant was truly desirous of having the fault of the parties determined for the accident in which his vehicle was damaged, he must resort to a court of law, not an administrative body. The Maryland Insurance Administration cannot penalize a licensee for doing its job.

The third of Complainant's Exceptions is to the ALJ's refusal to allow Licensee's insured to testify at the hearing. I find this Exception to be totally without merit. Nothing Mr. Nguyen might have testified to at the hearing could impact on the issue of Licensee's alleged violation of §27-303(2). Once again, the litany of cases by Complainant does not support his proposition and are not germane to the sole issue raised by Complainant.

Exception four suggests that it was error for the ALJ to prevent Complainant from disputing the liability in an accident during the hearing. Complainant has complainant has completely misinterpreted the prevailing statute in order to fit his questioned motives. He is correct in stating that the statutory remedy is independent

of liability disputes.[5] However, the remainder of the Complainant's argument,ending with the conclusion that the ALJ has committed a "constitutional tort" is absurd. Complainant vaguely argues that the civil penalties available pursuant to the statute somehow inure to his benefit. This is not the case. The simple truth is that Complainant has not demonstrated any arbitrary and capricious actions directed specifically to him.

Exception five advances the argument that the ALJ used an unduly narrow definition of the term "arbitrary and capricious." Complainant, unhappy with the cases relied upon by the ALJ, provides nine citations, which he argues, supports his broader definition of "arbitrary and capricious." Once again, the cited cases are of no support to Complainant's position, and many of the cited cases actually support Licensee's actions. GEICO investigated Complainant's claim, interviewed witnesses and decided there was not a sufficient basis upon which to honor his claim. Complainant was fully advised of Licensee's decision. Rather than litigate the issue of liability in a court, Complainant first sought out criminal charges against the adverse driver, Mr. Nguyen, forcing the matter to trial where Mr. Nguyen was found not guilty. When the criminal angle failed, Complainant next availed himself of the administrative route, which is his right. However, nowhere in the body of the argument of this Exception does Complainant explain how a ruling allowing Mr. Nguyen to testify would have changed the outcome of the OAH hearing.

Exception seven, that the ALJ failed to incorporate into the record certain documents, is totally devoid of substance. Complainant states that during the hearing

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[5] *Id.*, p. 12.

he was asked by the ALJ whether he wished to move any documents into evidence not part of the MIA, file to which he responded in the negative.[6] Complainant complains now that he should have been advised on procedural issues by the ALJ. This is not appropriate and I cannot reward Complainant for his naiveté of the rules of administrative procedure despite their relaxed nature. Yet again Complainant fails to argue what distinction would result if this Exception were granted.

Exception eight calls attention to the ALJ's refusal to allow an untimely motion made after the hearing had closed to be made part of the record. Because all of Complainant's requests embodied in the untimely motion have been made part of this record, this Exception is moot.

Exceptions nine and ten deal with Complainants unrelenting demand that he be allowed to litigate the facts of the accident in the matter before the ALJ. Because I have addressed this precise issue several times, in reference to a number of the other Exceptions raised by Complainant, I will be brief in my comments. Complainant's first dissertation concerning the transcription process is not relevant. The contents of the statement are not connected to the issue in this matter. Neither is the content of the criminal proceeding. The question posed by Complainant at the end of Exception nine[7] must be rhetorical, as the answer in self-evident. The quashing of the subpoena, which resulted in the remaining subpoenaed material being withheld from Com-

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[6] *Id.*, p. 18, T. 66.

[7] *Id.*, p. 21. "How can the relevance of the [criminal] transcript and relevance by [sic] doubted?"

plainant, has also been discussed previously. Licensee's claim practices as to other non-related claims are not relevant to the issue of whether it acted in an arbitrary and capricious manner toward the Complainant.[8]

Turning next to Complainant's final Exception, number eleven. In this Exception Complainant argues that the ALJ erred in not finding that the Complainant demonstrated by a preponderance of the evidence that Licensee had acted in an arbitrary and capricious manner in denying his claim. It is difficult to separate the arguments made in this Exception from the other ten that precede it. The "adverse inference rule" is totally inapplicable to the present matter.[9] Complainant's disparaging conclusions, that Licensee defied a subpoena and committed perjury, are conclusory allegations, unsupported by the record. And, yet again, Complainant endeavors to persuade the MIA through his interpretation of the facts of the occurrence that his claim of arbitrary and capricious action on the part of the Licensee has been established. Complainant must accept the reality of his predicament that reasonable minds can disagree.

---

[8] "The most important class of facts which are excluded on the ground of irrelevancy are the acts and declarations, either of strangers, or of one of the parties to the action in his dealings with strangers. Such facts are denominated "*res inter alia acta.*" *Gruss v. Cummins* (Tex.Civ.App. El Paso, 1959)

[9] "Simply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence in unfavorable to him." *International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW) v. N.L.R.B.*, 459 F.2d 1329, 1336 (C.A.D.C., 1972). What Complainant ignores in attempting to apply this rule to his case is the need for relevant evidence.

He has twice selected the wrong forum to air his grievance. Complainant may yet prevail, but he cannot do so before this tribunal.

I have carefully evaluated the documentary record in this cause; the Exceptions filed by Wilbur H. Friedman, Complainant, Licensee's Response thereto, and the Recommended Decision of ALJ Rothenberg. In consideration thereof, and pursuant to COMAR 31.02.-02.14B and G, I am persuaded that the result reached by the ALJ is correct. A Recommended Decision summarily affirmed under COMAR 31.02.02. 10-2H is not precedent within the rule of *stare decisis* in other cases.

THEREFORE, it is hereby

ORDERED, that Complainant's Motion Requesting Leave to File Attached Reply Brief be, and the same is hereby **DENIED**, and it is further

ORDERED, that Complainant's Motion to Correct Errors in Transcript be, and there same is hereby **DENIED**, and it is further

ORDERED, that the Complainant's Exceptions to Findings Rulings, Recommendations and Omissions of Administrative Law Judge, and each of them, are **OVERRULED AND DENIED**, and it is further

ORDERED, that the Recommended Decision of ALJ Rothenberg be adopted as the Commissioner's Final Order, and it is further

ORDERED that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 5th day of February 2007.

R. STEVEN ORR
Insurance Commissioner

/s/ Thomas Paul Raimondi
Thomas Paul Raimondi
Associate Deputy Commissioner

APPENDIX F

BEFORE RICHARD F. ROTHENBURG,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

OAH No.: MIA-CC-33-06-43902

MIA No. MIA-2006-10-008

WILBUR H. FRIEDMAN,

COMPLAINANT

v.

GEICO INSURANCE COMPANY

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On June 26, 2006, the Maryland Insurance Administration ("the MIA") received a complaint from Wilbur Friedman ("the Complainant") alleging that GEICO

Insurance Company ("the Licensee") had improperly denied his automobile insurance claim.

The MIA investigated and, on July 25, 2006, it notified the Complainant that the Licensee had not violated Maryland Insurance law. The Complainant disagreed with the MIA's decision and requested a hearing on or about August 17, 2006.

On or about October 4, 2006, the MIA referred this matter to the Office of Administrative Hearings ("OAH") for a hearing with a delegation of authority for proposed findings of fact, proposed conclusions of law, and a proposed order. Md. Code Ann., Ins. I §2-210 (2003).

On December 5, 2006, I conducted a hearing at the OAH in Hunt Valley, Maryland, pursuant to Md. Code Ann., Ins. I §§2-210 and 2-213 (2003), and the Code of Maryland Regulations ("COMAR") 31.02.01 and 31.-15.07. The Complainant represented himself. Gregory S. Fanshaw, Esquire, represented the Licensee.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 through 10-226 (2004 & Supp. 2005); the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01; and MIA's Hearing Regulations, COMAR 31.02.01, govern this proceeding.

ISSUE

Whether the Licensee engaged in an unfair claims settlement practice when it denied the Complainant's claim for loss resulting from a motor vehicle collision?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated into the hearing record the MIA's investigation file, which includes the following documents:

1. Letter from the Complainant, received by the MIA on June 26, 2006
2. Letter from the MIA to the Licensee, dated July 6, 2006
3. Letter from the Complainant, received by the MIA on July 7, 2006
4. Letter from the Complainant, received by the MIA on July 11, 2006
5. Letter from Licensee to the MIA, received July 17, 2006 with attachments
6. Letter from the MIA to the Complainant, dated July 25, 2006
7. Complainant's request for a hearing, received by the MIA on August 17, 2006
8. Letter from the Complainant, received by the MIA on September 6, 2006
9. Letter from the MIA to the Licensee, dated May 17, 2006

On behalf of the Complainant: None

On behalf of the Licensee:

1. Email to Complainant from Marty Segal, dated May 21, 2006

Testimony

The following witnesses testified on behalf of the Complainant: Christina Michelle Krech, Licensee's claims examiner; Victorine Friedman, Complainant's wife; and Martin Segal. The Licensee adopted the testimony of Ms. Krech elicitied during the Complainant's case in chief.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On May 16, 2006, on or about 9:30 p.m., the Complainant pulled the vehicle he was driving to the curb and stopped so as to discharge his passengers in front of a shopping mall restaurant.
2. The passenger in the left rear of the Complainant's vehicle opened the driver's side rear door, which was struck and damaged by the Licensee's insured, who was in the process of attempting to pass the Complainant.
3. The Complainant reported the accident to the Licensee on May 17, 2006.
4. The Licensee's obligation to its insured is to pay damages for which the insured is legally liable.
5. The Licensee investigated the circumstances of the accident. The Licensee considered the reports of the accident from its insured, the Complainant and other witness who were familiar with the facts.
6. The Licensee's investigation indicated that the damages to the Complainant's vehicle occurred because the Complainant's passenger opened the rear driver's side door when it was not safe to do so and interfered with traffic.

7. The Licensee sent the Complainant notice that it had determined its insured was not legally liable for the damages and denied his claim.
8. The Complainant replied and informed the Licensee that it denied his meritorious claim.
9. In reply to the Complainant's assertion, the Licensee's Assistant Vice President advised the Complainant that it had determined that its insured was not negligent and directed the Complainant's attention to Article 21-1105(a) of the Maryland Transportation Code which provides that a person may not open the door of a motor vehicle on any side available to moving traffic unless it is reasonably safe to do so and can be done without interfering with the movement of traffic.
10. The Complainant filed a complaint with the MIA.
11. The MIA reviewed the complaint, the response from the Licensee, and the documents in the file, and concluded that the Licensee did not violate the Insurance Article.
12. The MIA informed the Complainant of its determination and advised him of his right to have a hearing, but that the hearing would be limited to the issue of whether the insurance company had acted arbitrarily or capriciously.
13. The Complainant requested a hearing.

DISCUSSION

When the MIA referred this case to the OAH it directed that the presiding Administrative Law Judge pay specific attention to Section 27-303 of the Maryland

Insurance Article. Section 27-303(2) is specific to this case. That section states the following:

> §27-303. Unfair claim settlement practices — In general.
>
> It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:
>
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information.

Md. Code Ann., Ins. II §27-303(2) (2006).

The standard of "arbitrary and capricious" is often applied to a court's review of an administrative agency's decision. The test for an arbitrary and capricious decision is "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Resetar v. State Bd. of Ed.*, 284 Md. 537, 339 A. 2d 225, *cert. den.* 100 S.Ct. 74, 444 U.S. 838, 62 L.Ed.2d 49 (1979). When an agency's decision is based on a "comprehensive evaluation of the facts," the action is not arbitrary and capricious. *Zeitschell v. Board of Ed. of Carroll County*, 274 Md. 69, 332 A. 2d 906 (1975). Likewise, when a Licensee makes a determination, as in the instant case, the same test can be applied.

Applying the standard to the actions of an insurance company, an administrative law judge is not empowered to substitute his or her judgment for that of the insurance company. Instead, an administrative law judge must determine whether a "reasoning mind" could have reached the factual conclusion reached by the insurance company In this case.

Under Md. Code Ann., State Gov't §10-217 (2004), the burden of proof in this case is by a preponderance of

the evidence. It rests with the Complainant as the moving party. *Commissioner of Labor and Industry v. Bethlehem Steel Corporation*, 344 Md. 17, 34, 684 A.2d 845, 853 (1996).

The Complainant's case at the hearing consisted of three witnesses, the Licensee's claims examiner, the Complainant's wife and the person who opened the door that was struck by the Licensee's insured[1]. The essence of the claims examiner's testimony was that she took statements from the Complainant, the insured, and the person who opened the door, determined that the insured was not at fault and notified the Claimant of her decision. The facts known to the Licensee revealed that the Complainant had pulled up to a curb in front of a restaurant to discharge his passengers. A passenger opened the rear driver's side door into a traffic lane and the door was struck by the insured. The passenger, who "was eager to eat", stated that the door was open for two seconds before it was hit.

Upon being notified of the Licensee's determination, the Complainant replied and asserted that the Licensee was engaged in a program of denying meritorious claims when it could get away with it.

---

[1] At the hearing, I granted the Licensee's Motion to Quash the subpoena for David Pushman to produce Licensee's records regarding management structure, training of its employees and information about hundreds of other claims, some more than 10 years old, because it was not relevant to the issue of the hearing. I also sustained the Licensee's objection to the testimony of the other driver, the Licensee's insured, for the same reason. The Complainant's Motion to Make a Copy of the Criminal Proceeding of the traffic complaint the Complainant filed against the Licensee's insured is denied as irrelevant.

The Licensee's Assistant Vice President reviewed the Complainant's claim and concluded that it had been handled in an appropriate manner. In his letter to the Complainant, the Assistant Vice President directed the Complainant's attention to Md. Code Ann. Trans. II §21-1105(a)(2006), which provides:

> (a) A person may not open the door of a motor vehicle on any side available to moving traffic unless:
>
> (1) It is reasonably safe to do so; and
>
> (2) It can be done without interfering with the movement of other traffic.

The Assistant Vice President informed the Complainant that it had concluded from its investigation that his passenger negligently opened the left rear door of his vehicle when it was unsafe to do so and this action was the sole proximate cause of the accident.

The facts in this case are not in dispute but Complainant maintains that the insured was negligent and that the Licensee fails to pay meritorious claims. The legislature enacted Title 27, Subtitle 3 of the Transportation Article to provide claimant's an additional administrative remedy to challenge insurers who have allegedly failed to settle claims in compliance with the Maryland Insurance Law; it did not create an adjudicatory process to allow claimants to dispute liability in accidents. Liability disputes properly remain in the Constitutional Courts.

I conclude that the Licensee conducted a reasonable investigation of the Complainants claim and concluded that their insured was not at fault. There is ample evidence to support the Licensee's determination. The Complainant's passenger who opened his door into a

traffic lane was clearly in a hurry and failed to ascertain it was safe to do so.

After reviewing the evidence presented, I conclude that the Licensee did not act in an arbitrary or capricious manner while handling the Complainant's claim. For this reason, I find that the Complainant has failed to meet his burden of proof.[2]

PROPOSED CONCLUSION OF LAW

The Complainant failed to prove that the Licensee engaged in unfair practices in violation of Md. Code Ann., Ins. II §27-303(2) when it denied claim for damages to his motor vehicle.

PROPOSED ORDER

Upon the foregoing Proposed Findings of Fact, Discussion, and Proposed Conclusions of Law, I recommend the MIA **ORDER** that the Complainant's appeal is DENIED and DISMISSED.

December 26, 2006
Date decision mailed

/s/ Richard F. Rothenburg
Richard F. Rothenburg,
Administrative Law Judge

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[2] Subsequent to the close of the hearing, the Complaint filed a Motion To Make Certain Explicit Findings And To State Reasons For Certain Rulings In ALJ Decision. The Motion filed after the record closed is untimely and is denied. COMAR28.02.01.-16B(1).

[Right To File Exceptions Omitted in Printing]

[File Exhibit List Omitted in Printing]

[Mailing List Omitted in Printing]

APPENDIX G

EXCERPTS FROM COMPLAINANT WILBUR H. FRIEDMAN'S EXCEPTIONS TO FINDINGS, RULINGS, RECOMMENDATIONS AND OMISSIONS OF ADMINISTRATIVE LAW JUDGE

Complainant excepts to the following findings, rulings, recommendations and omissions of in the Administrative Law Judge Decision (ALJD) herein, and alleges that they constitute error:

1. The ruling that Respondent could avoid Complainant's subpoena duces tecum because of Vice-President Pushman's alleged incapacity.

* * *

2. The ruling that the records Complainant sought in his subpoena duces tecum were not relevant.

* * *

3. The ruling that the testimony of Mr. Nguyen, Respondent's insured, was irrelevant.

* * *

4. The statement, ALJD pp. 6-7, that Section 27 Subtitle 3 of the "Transportation" (he meant the Insurance) Article "did not create an adjudicatory process to allow claimants to dispute liability in accidents. Liability disputes properly belong in the constitutional courts."

* * *

5. The adoption, ALJD p. 5, of an unduly narrow definition of the term "arbitrary and capricious."

6. The following findings in the ALJD are unsupported by any evidence whatsoever and are incorrect:

* * *

7. The ALJ's failure to incorporate into the record the contents of the investigation file and certain other documents.

8. The ALJ's ruling, ALJD p. 7, n. 2, that Complainant's motion made after the record was closed was untimely and should be denied.

9. The ALJ's ruling, ALJD pp. 5-6, n. 1, that Complainant's motion, to include in the record a copy of the criminal proceeding should be denied as irrelevant.

10. The ALJ's failure to allow Complainant to present his case, using (1), the testimony from the criminal case; (2) the testimony of Mr. Nguyen; (3) the records of the collision in the possession of Respondent; and (4) the subpoenaed material relating to Respondent's manuals, training sessions, and other evidence of its claims practices.

11. The ALJ's failure to find that: (a) Complainant, by a preponderance of the evidence, demonstrated that Respondent, by failing to pay this claim, acted arbitrarily and capriciously; (b) Respondent's behavior warranted drawing adverse inferences which were fatal to its defense; (c) Complainant had presented a prima facie case; and (d) even if Respondent's decision to deny Complainant's claim had at the beginning been rational, the additional evidence furnished it made that decision arbitrary and capricious.

APPENDIX H

EXCERPT FROM PETITIONER'S MOTION TO ALJ TO MAKE CERTAIN EXPLICIT FINDINGS AND TO STATE REASONS FOR CERTAIN RULINGS IN ALJ DECISION, DECEMBER 12, 2006

* * *

2. Complainant moves that the ALJ state whether (a) any respondent employer in an OAH proceeding can avoid subpoenas and requests for discovery by simply moving, firing or retiring the official upon whom they were served, and (b) if not, which respondents can, which cannot, and what rule which distinguishes the two groups.

3. Complainant moves the ALJ to state whether Respondent is free to review subpoenaed material, present that portion which it deems favorable, and to ignore the subpoena as to the rest. If it is not free to do so, Complainant moves the ALJ to determine an appropriate response: strike the defense in its entirety, or draw an adverse inference.

4. Complainant moves the ALJ to explain why certain records sought to be subpoenaed and discovered are irrelevant.

* * *

6. Complainant now moves the ALJ to state why certain kinds of evidence are not relevant to show the Respondent's hidden Policy.

* * *

8. Complainant moves that the ALJ discredit the testimony of Ms. Krech in its entirety and further moves the

ALJ to state whether or not he intends to refer this matter, or recommend the referral of it, to the Attorney-General's office for criminal proceedings, and the reasons supporting his action or inaction.

APPENDIX I

EXCERPTS FROM TRANSCRIPT OF DECEMBER 5, 2006 HEARING BEFORE AN ALJ OF THE OFFICE OF ADMINISTRATIVE HEARINGS

(From the record extract before the Court of Special Appeals of Maryland)

TR. 16, l. 22: JUDGE: And the fact that you [X] think that they have documents or manuals or practices or other things that preclude that, I don't find to be relevant.

[X] I.e., Petitioner.

* * *

TR. 17, l. 8: MR. FRIEDMAN: Are you also saying that any — that nothing I had subpoenaed was relevant?

* * *

L. 12: JUDGE: But I haven't heard you say anything to me today that I consider to be relevant beyond the presence of the claims examiner.

* * *

l. 17: JUDGE: Okay. And I'm not really certain whether it's even relevant for us to sit here and litigate or hear evidence about what occurred at the accident.

* * *

TR. 18, l. 1: JUDGE: My ruling is my ruling.

* * *

l. 23: JUDGE: Krech is the lady here, and I want to hear from her first. If you are going to call her.

* * *

TR. 27, l. 15: Q. MR. FRIEDMAN: Does — does GEICO have any manual which would tell a claims analyst how to operate?

* * *

l. 19: A: No

* * *

TR. 28, l. 5: Q: Okay. A large book that says — which says how claims examiners do their thing?

* * *

l. 12: Q: Does GEICO have a procedures manual which says — which tells claims examiners how to deal with claims?
l. 14: A: I've been there for eight years. It doesn't say this situation do this or this situation do that.
l. 17: Q. There is no such manual?
l. 18: A: No.
l. 19: Q. Do you have training sessions?

* * *

TR. 29: l. 1: A: Delaware training sessions, if you have a Delaware license, then you have to go to classes just to make sure that you're on top of your Delaware license for claims.
l. 5: Q: Okay. Are you also licensed in Delaware?
l. 6: A: Yes.
l. 7: Q: Are — I gather that there's no such license in Maryland.
l. 9: A: Not that I'm aware of.

* * *

TR. 58, l. 16: JUDGE: Now, I don't see any need to rehash what occurred at the accident . . .

* * *

TR. 60, l. 12: MR. FRIEDMAN: Through Mr. Nguyen, I will show * * *

TR. 61, l. 8.: JUDGE: I agree. Well, his objection to calling Mr. Nguyen is sustained.

* * *

APPENDIX J

EXCERPT FROM RESPONDENT GEICO'S MOTION TO PROTECT AS TO COMPLAINANT'S DISCOVERY AND SUBPOENA REQUESTS AND MOTION TO QUASH SUBPOENA

OFFICE OF ADMINISTRATIVE HEARINGS

Case No. MIA-CC-33-06-43902

WILBUR H. FRIEDMAN

Complainant

v.

GEICO

Respondent

Hearing Date: December 5, 2006

MOTION TO PROTECT AS TO COMPLAINANT'S DISCOVERY AND SUBPOENA REQUESTS AND MOTION TO QUASH SUBPOENA

* * *

1. The sole relevant issue in this matter is whether GEICO's denial of Complainant's property danage claim constituted an unfair claim settlement practice pursuant to Md. Code Ann. Insurance Art. §27-303(2).

2. The Complainant, Wilbur Friedman, has filed a request for discovery pursuant to COMAR §28.02.01.-10 and 31.02.01.05-1 seeking information, documents and other items which are not relevant to the subject matter of this case. Additionally the requests are overly broad and unduly burdensome and include requests for privileged information. * * *

* * *

5. The Complainant is clearly seeking information and documentation which has nothing to do with the issues involved in this case and his attempts are meant to harass and inconvenience both GEICO and it's insured, Vinh Phuc Nguyen.

* * *

MEMORANDUM OF LAW

I. Facts

* * *

II. Argument

The sole relevant issue in this matter is whether or not GEICO's denial of Mr. Friedman's claim constitutes a violation of the Md. Code Ann. Transp. §27-303(2) in that it's denial of Mr. Friedman's claim was arbitrary, capricious or unreasonable. The matter was heard by the Maryland Insurance Administration (hereinafter "MIA"), and the MIA found in favor of the respondent GEICO finding that sufficient evidence existed whereby GEICO could reasonably deny the Complainant's claim. The ultimate issue of who is at fault for the automobile accident is not the issue. The determination of fault for

an automobile accident should be held in the proper forum which would be either the District or Circuit Court of the State of Maryland or another court of appropriate jurisdiction.

The Complainant, Wilbur Friedman, in this matter has filed two separate requests for discovery, * * *. The requests listed in Complainant's requests for discovery have nothing to do with the sole issue at hand, that being the alleged violation of §27-303(2) of the Insurance Article and the requests seek information that are not related to the claim at hand. They seek a wide range of information, from managerial structure and training of employees as well as information from hundreds of other claims that are unrelated to this matter. * * *

* * *

It is clear that the Complainant is attempting to both litigate his negligence case as well as harass and inconvenience both GEICO and Mr. Nguyen, with his burdensome requests for discovery. Moreover, the proper forum for determining fault, which appears to be the ultimate motive of the Complainant, is be for him to file this matter in a court in an appropriate jurisdiction that clearly has authority to make such a determination.

* * *

/s/ Gregory S. Fanshaw

* * *

Attorney for Respondent.

APPENDIX K

EXCERPT FROM CERTIFIED MAIL RECEIPT OF LETTER FROM OFFICE OF ADMINISTRATIVE HEARINGS ADDRESSED TO DAVID PUSHMAN, 1 GEICO BOULEVARD, FREDERICKSBURG, VA. 22412 AND SIGNED BY AMY VANDEVENDER ON NOVEMBER 13, 2006

OFFICE OF ADMINISTRATIVE HEARINGS
11101 Gilroy Road
Hunt Valley, Maryland 21031

BEFORE AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

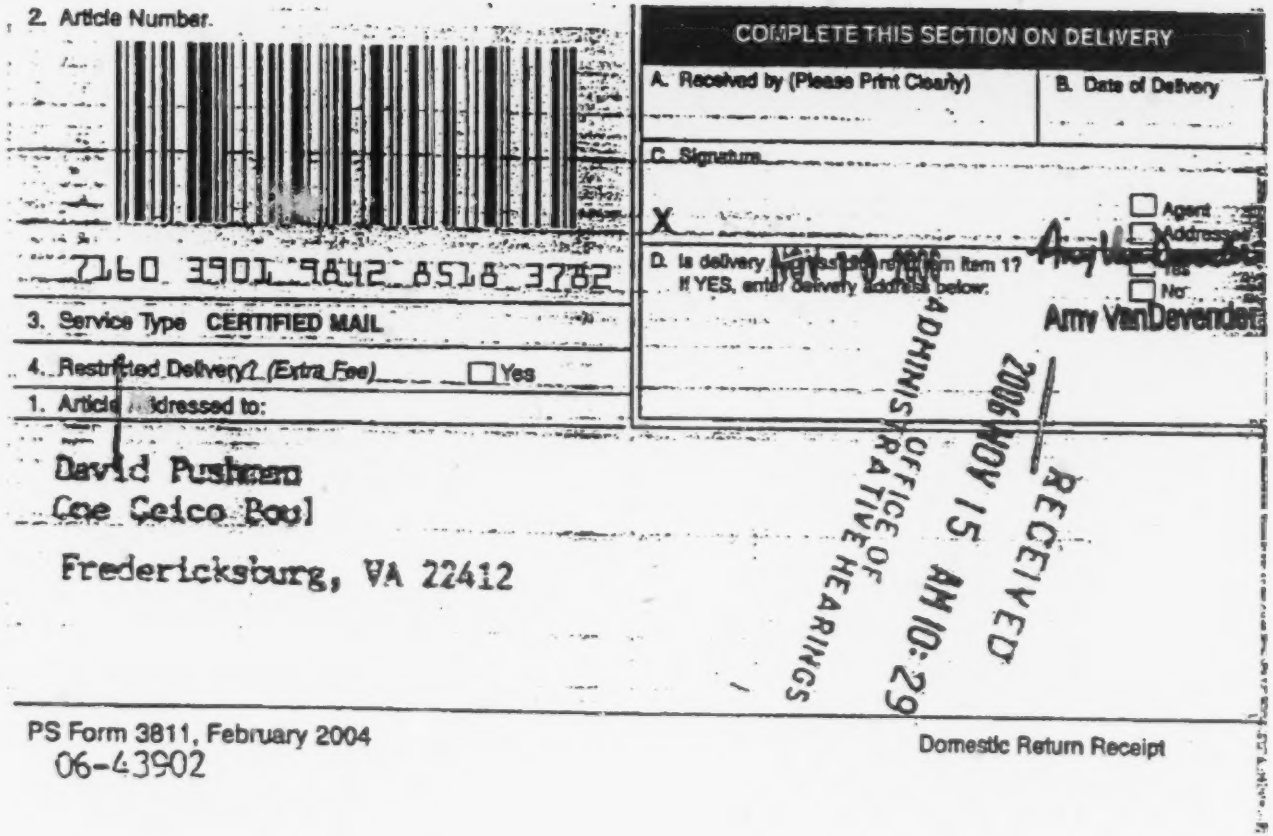
Case Number MIA-CC-33-06-43902

TO: David H. Pushman
Geico Employees Insurance Company
One Geico Boulevard
Fredericksburg, VA 22412

SUBPOENA (Duces Tecum)

IN THE MATTER OF: Friedman v. GEICO

* * *



2. Article Number.

7160 3901 9842 8518 3782

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

David Pusheen
Coe Geico Boul

Fredericksburg, VA 22412

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

Amy VanDeventer

RECEIVED
2006 NOV 15 AM 10:29
ADMINISTRATIVE OFFICE OF HEARINGS

PS Form 3811, February 2004

Domestic Return Receipt

06-43902

BEST AVAILABLE COPY

UNITED STATES POSTAL SERVICE

First-Class Ma
Postage & Fee
USPS
Permit No. G-1

• Print your name, address and ZIP+4 below •

OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW BUILDING
11101 GILROY ROAD
HUNT VALLEY MD 21031-1301

58a

APPENDIX L

EXCERPT FROM CERTIFIED MAIL RECEIPT OF LETTER FROM OFFICE OF ADMINISTRATIVE HEARINGS ADDRESSED TO CHRISTINIA KRECH, 1 GEICO BOULEVARD, FREDERICKSBURG, VA 22412 AND SIGNED BY AMY VANDEVENDER ON NOVEMBER 13, 2006

OFFICE OF ADMINISTRATIVE HEARINGS
11101 Gilroy Road
Hunt Valley, Maryland 21031

BEFORE AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

Case Number MIA-CC-33-06-43902

TO: Christinia Krech
Claims Examiner
Geico Insurance Company
1 Geico Boulevard
Fredericksburg, VA 22412

SUBPOENA (Duces Tecum)

IN THE MATTER OF: Friedman v. GEICO

* * *

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APPENDIX M

EXCERPT FROM PETITIONER'S NOVEMBER 6, 2006 REQUEST TO OFFICE OF ADMINISTRATIVE HEARINGS TO SERVE SUBPOENAS

RE: Friedman v. GEICO
MIA-2006-10-008
MIA-CC-33-06-43902

Dear Ms. Carter:

I enclose my check for $28.27. Pursuant to COMAR Secs. 31.02.01.06 and 28.02.01.11, I would like you to serve the following subpoenas by CERTIFIED mail: The above-entitled proceeding is scheduled for December 5.

1. Subpoena to attend and testify:
Mr. Vinh Phuc Nguyen,
13320 Oriental Street,
Rockville, MD 20853.

2. Subpoena to attend and testify:
Ms. Christinia Krech, Claims Examiner
GEICO Insurance Company
1 GEICO Boulevard
Fredericksburg, VA 22412-0004

3. Subpoena to produce tangible items at the hearing:
Mr. David H. Pushman
Government Employees Insurance Company
One GEICO Boulevard
Fredericksburg, VA 22412-0001

I am sending you two copies of the four-page document entitled "Request for subpoena requiring the production of documents at the hearing." You can append one copy to the subpoena on Mr. Pushman. . . .

Wilbur H. Friedman — Request for subpoena requiring the prodution of documents at the hearing — Page 1

A. Definitions:

1. The term "record," as used herein, is intended to encompass . . .

2. The term "Incident #1," as used herein, refers to the May 16, 2006, collision between the automobiles of GEICO'S insured Vinh Phuc Nguyen and Wilbur H. Friedman.

3. The term "FVCO" designates GEICO'S Fredericksburg Virginia Claims Office.

* * *

B. Records Sought:

1. Records which show the organizational structure of FVCO on May 25, 2006, particularly the supervisory and managerial structure which extended on that date upwards and downwards from Ms. Christiania Krech of the claims department to the topmost supervisor and manager of the claims department and thence to his/her supervisors and managers.

* * *

3. All records . . . whose contents are intended to direct or guide conduct . . . by claims department employees . . . in processing claims against an insured of

GEICO in circumstances where the insured has caused only property damage to the property of another.

* * *

7. All records of any kind, as set forth in "definitions," above, relating to Incident #1, above.

8. Records describing the system by which the GEICO claims department numbers and identifies incidents brought to its attention by GEICO's insured or by claimants against GEICO's insureds.

9. Using the numbering system described above in "8," all records of any kind, as set forth in "definitions," above, of the 75 incidents which immediately preceded Incident #1, above and which meet the following two criteria: (1) A claim was made regarding that incident against a person insured by GEICO. (2) GEICO declined to pay the claim.

10. Using the numbering system described above in "8," all records of any kind, as set forth in "definitions," above, of the 75 incidents which immediately preceded Incident #1, above and which meet the following two criteria: (1) A claim was made regarding that incident against a person insured by GEICO. (2) The claim involved only property damage.

* * *

13. Using the numbering system described above in "8," all records of any kind, as set forth in "definitions," above, of the 25 incidents which immediately succeeded Incident #1, above and which meet the following two criteria: (1) A claim was made regarding that incident against a person insured by GEICO. (2) GEICO declined to pay the claim.

* * *

17. Records which identify the custodians of the records set forth in all of the 16 preceding numbered paragraphs.

* * *

20. All records showing, (a) for the period January 1, 1996 to date, and (b) for the FVCO . . . the reporting schedules, i.e., the periods for which aggregate claims experience is collected and reported to management in those claims office and to management above those claims offices: e.g., weekly, monthly, quarterly, or annually. In the event that the reporting schedules have changed during the period January 1, 1996 to date, records showing when each reporting schedule was in force.

21. All records showing, (a) for the period January 1, 1996 to date, and (b) for the FVCO . . . and (c) in the documents identified in the response to paragraph 20 above, the categories in which the reports are made, e.g. and without limitation, (i) the total amounts claimed, (ii) the nature of the claims, e.g., personal injury, property damage or both, (iii) the total amounts claimed, (iv) the number of claims resolved informally, (v) the nature of those claims at set forth in paragraph 21(ii) above, (vi) the dollar value of the number of claims paid, (vii) the number of claims denied in their entireties; (viii) the nature of the claims denied in their entireties, e.g. those set forth in paragraph 21(ii) above, and (ix) the dollar value of the number of claims denied in their entirety.

22. All records containing, (a) for the period January 1, 1996 to date, and (b) for the FVCO . . . and (c) in the documents identified in the response to paragraph 21

above, the actual numbers and quantities set forth in the reports.

23. All records of comments above, responses to, and analyses of the records described in paragraph 22 by (a) the first level of supervision above the level of Ms. Christiania Krech of the claims department, or (b) higher management within the FVCO . . . or (c) higher management outside the FVCO. . .

24. Records which identify the custodians of the records set forth in all of the numbered paragraphs 19 through 23.

APPENDIX N

LETTER FROM JOHN EDMONDS, CONTINUING CLAIMS SUPERVISOR AT FREDERICKSBURG TO PETITIONER, DENYING PETITIONER'S REQUEST FOR DISCOVERY NOVEMBER 2, 2006

GEICO Government Employees Insurance Company
GEICO General Insurance Company
GEICO Indemnity Company
GEICO Casualty Company

One GEICO Blvd. — Fredericksburg, VA 22412-0001

November 2, 2006

WILBUR H. FRIEDMAN
16303 SPRING WATER CT
ROCKVILLE MD 20853-3210

RE: Request for records

Dear Mr. Friedman:

We are in receipt of your request for records: however, there was no subpoena enclosed with your letter. We are, therefore, unable to provide you with the requested information. Upon receipt of a properly served subpoena, we will be happy to answer your request.

We are sorry we can not be of help to you in this matter at this time.

Sincerely,

/s/ John Edmonds
John Edmonds
Continuing Claims Supervisor
GEICO Insurance Company

JE/dt

APPENDIX O
EXCERPT FROM LETTER FROM PETITIONER TO VICE-PRESIDENT PUSHMAN AT GEICO, REQUESTING DISCOVERY NOVEMBER 1, 2006

Wilbur H. Friedman
16303 Spring Water Court
Rockville MD 20853-3210
Phone: (H) 301-260-8283
Fax: (H) 301-260-8281
Email: vrod43@erols.com
November 1, 2006

Mr. David H. Pushman
Government Employees Insurance Company
One GEICO Boulevard
Fredericksburg, VA 22412-0001

RE: Friedman v. GEICO
MIA-2006-10-008
MIA-CC-33-06-43902

Dear Mr. Pushman:

Pursuant to COMAR Sec. 28.02.01.10, as modified by COMAR Sec. 31.02.01.05-1 (incorrectly designated Sec. 32.02.01 in a letter sent to you on October 11, 2006 by the Office of Administrative Hearings), I request you to produce, so that I may inspect, and copy when appropriate, the records described in numbered paragraphs 1 through 17 of the attached three page document.

The records sought will also be the subject of a subpoena under COMAR Secs. 28.02.01.11 as modified by 31.02.01.06. . . .

* * *

Yours truly,
Wilbur H. Friedman

APPENDIX P

EXCERPT FROM NOTICE OF HEARING AND ATTACHMENT FROM OFFICE OF ADMINISTRATIVE HEARINGS TO PETITIONER, OCTOBER 11, 2006

OFFICE OF ADMINISTRATIVE HEARINGS
11101 GILROY ROAD
HUNT VALLEY, MARYLAND 21031

NOTICE OF HEARING

Wilbur H. Friedman
16303 Spring Water Court
Rockville, MD 20853

Date: 10-11-2006
Case#: MIA-CC-33-06-43902
RE: Friedman v. GEICO
MIA-2006-10-008
0158715810101108

This is to advice you that the above referenced case has been scheduled for Tuesday, December 05, 2006, at 1:00 PM at: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031.

At issue is whether the licensee complied with the provisions of the Insurance Code. The legal authority for the hearing is Md. Ann. Code, Ins. I, Section 2-210. The procedure to be followed at the hearing is set forth in Md. Code Ann., State Gov't., Sections 10-201 through 10-226, and COMAR 32.02.01 and 28.02.01.

Parties have the right to present witnesses and documents, via subpoena, and to request a copy of the hearing procedures involves, upon payment of costs. * * *

* * *

HEARING INFORMATION

PLEASE READ CAREFULLY

* * *

Requests for the issuance of a subpoena must be made in writing and received by this office not less than ten (10) calendar days prior to the scheduled hearing. The request should include the case name and number, date of the hearing, and the complete names and addresses of individuals to be subpoenaed. Pursuant to COMAR 28.02.01.11C, subpoenas will be served by regular U.S. mail, unless otherwise requested. A $5 fee for each subpoena requested may be charged. Checks should be made payable to Maryland State Treasurer.

* * *

APPENDIX Q

EXCERPT FROM TRANSCRIPT OF CRIMINAL PROCEEDING HEARING IN MARYLAND DISTRICT COURT, AUGUST 31, 2006

---

p. 4, l. 19: JUDGE JOHNSON: Mr. Nguyen * * * Do you plead guilty or not guilty?
l. 22: MR. NGUYEN (THROUGH INTERPRETER): No, your honor.

* * *

p. 5: l. 2: JUDGE JOHNSON: It's not a yes or no question, Mr. Nguyen, do you plead guilty or not guilty.
l. 5: MR. NGUYEN (THROUGH INTERPRETER): Not guilty, your honor.

p. 8: l. 14: JUDGE JOHNSON: Well, Mr. Nguyen, do you have any questions you want to ask Mr. Friedman? You don't have to if you don't want to?

l. 17: MR. NGUYEN (THROUGH INTERPRETER): (Inaudible).

l. 19: JUDGE JOHNSON: I'm asking if you have questions. I'll hear from you in a minute. At this time do you have questions of Mr. Friedman?
l. 22: MR. NGUYEN (THROUGH INTERPRETER): No, I have no questions, your honor.

P. 9, l. 17: JUDGE JOHNSON: Mr. Nguyen, what would you like to tell me?
l. 19: MR. NGUYEN (THROUGH INTERPRETER): After the impact?
l. 21: JUDGE JOHNSON: Tell me before the impact. Tell me why did you hit the car door?

* * *

P. 10, l. 1: MR. NGUYEN (THROUGH INTERPRETER): When I pulled into the parking lot, just the beginning to the entrance to the restaurant. I was waiting for his car to around, but his car was parked there. I thought he was parked there and there was nobody else beside him, so I just go up and then he opened the door. I mean the people inside his car opened the door. So it was quick. So I hit the car door.

* * *

P. 10, l. 12: JUDGE JOHNSON: Mr. Friedman, do you have questions you want to ask Mr. Nguyen? You don't have to if you don't want to.
l. 15: MR. FRIEDMAN: Yes, I do. Where was he going?
l. 17: MR. NGUYEN (THROUGH INTERPRETER): I was also going to the restaurant.
l. 19: JUDGE JOHNSON: You were going from 95 or going to (inaudible):
l. 21: MR. NGUYEN (THROUGH INTERPRETER): I was coming from 355.
P. 11: l. 1: JUDGE JOHNSON: What restaurant were you going to is the question? You said you were going to the restaurant, which one? There are at least three or four in the shopping center?
l. 5: MR. NGUYEN (THROUGH INTERPRETER): Your honor, I don't know the name of restaurant. Oh, a Vietnamese restaurant.
l. 8: JUDGE JOHNSON: You were going to go straight and then turn left into a parking lot?
l. 10: MR NGUYEN (THROUGH INTERPRETER): No, I hadn't turned left yet.
l. 12: JUDGE JOHNSON: I understand, you were going to, I said.

l. 14: MR. NGUYEN (THROUGH INTERPRETER): He was, his car was before my car, in front of my car.

* * *

P. 12: l. 12: JUDGE JOHNSON: I have to find Mr. Nguyen not guilty. I can't find, beyond a reasonable doubt, that he was negligent in driving his car. The standard in a civil case is far different. Is it more likely than not that Mr. Nguyen was negligent?

* * *

P. 13: l. 4: And you [Mr. Friedman] are free to pursue your civil action. . . .

* * *

APPENDIX R

EXCERPT FROM NOTICE OF HEARING AND ATTACHMENT FROM MARYLAND INSURANCE ADMINISTRATION TO PETITIONER AND GEICO, OCTOBER 4, 2006

STATE OF MARYLAND
INSURANCE ADMINISTRATION

TO: OFFICE OF ADMINISTRATIVE HEARINGS
FROM: R. Steven Orr, Commissioner
Maryland Insurance Administration

By: Daniel Wait
Insurance Investigator

SUBJECT: NOTICE OF HEARING

MIA-2006-10-008

This Hearing will be held under the provisions of the Maryland Code Annotated, Insurance Section 2-210, at the request of Wilbur H. Friedman. Mr. Friedman asserts that Government Employees Insurance Company erred in the handling and denial of his automobile claim.

Take notice that specific attention at the hearing will be directed to Maryland Code Annotated, Insurance Section 27-303. In accordance with the applicable laws and regulations, I am delegating authority to the Office of Administrative Hearings to issue proposed findings of fact, proposed conclusions of law and a proposed Order in this case.

At the Direction of the Commissioner

/s/ Daniel Wait
By: Daniel Wait
Insurance Investigator
Date: 10/4/06

/s/ P. Randi Johnson/kss
Approved By: P. Randi Johnson
Associate Commissioner

Date: 10/4/06

* * *

APPENDIX S

EXCERPT FROM "NOTICE OF REQUEST FOR HEARING AND FINAL DETERMINATION" FROM MARYLAND INSURANCE ADMINISTRATION TO VICE-PRESIDENT PUSHMAN AND PETITIONER, SEPTEMBER 20, 2006

[SEAL]

MARYLAND INSURANCE ADMINISTRATION

ROBERT L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lt. Governor

R. STEVEN ORR
Commissioner

JAMES V. McMAHAN, III
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property and Casualty

525 St. Paul Place, Baltimore, Maryland 21202-2272
Phone: 410-468-2340 Fax: 410-468-2334
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

September 20, 2006

Mr. David H. Pushman
Government Employees Insurance Company
One GEICO Boulevard
Fredericksburg, Virginia 22412-0001

Subject: Notice of Request for Hearing and Final Determination

RE: MIA File Number: 134032-P-2006-CEA-C
Complainant: Wilbur H. Friedman
Policy Number: Unknown

Dear Mr. Pushman:

Pursuant to the Insurance Article of the Annotated Code of Maryland Section 2-210, and the Code of Maryland Regulations (COMAR) 31.02.01, you are hereby notified that a hearing request has been made by the complainant to our recent finding. When scheduled, you will receive additional notice including the date, time and location of the hearing.

Very truly yours,
/s/ Jason Decker

Jason Decker
Assistant Chief Investigator
410.468.2367

JD/dre

cc: Mr. Wilbur H. Friedman
16303 Spring Water Court
Rockville, Maryland 20853-3210

APPENDIX T

EXCERPT FROM STATEMENT IN SUPPORT OF PETITIONER'S REQUEST FOR HEARING TO MARYLAND INSURANCE ADMINISTRATION, AUGUST 14, 2006 LETTER TO MIA

Wilbur H. Friedman
* * *
August 14, 2006

R. Steven Orr, Commissioner
Maryland Insurance Commission
525 Saint Paul Place
Baltimore, MD 21202-2272

RE: GEICO, MIA File Number 134032-P-2006-CEA-C

Dear Mr. Orr:

Pursuant to COMAR Sec. 31.02.02, I request a hearing in this matter.

The attached documentation and exhibits thereto set forth the facts here.

* * *

BEFORE THE
MARYLAND INSURANCE ADMINISTRATION
CASE 134032-P-2006-CEA-C

STATEMENT IN SUPPORT OF
REQUEST FOR HEARING

* * *

3. Seven reasons why Mr. Nguyen was negligent

* * *

5. Six reasons why neither the undersigned nor his brother was guilty of contributory negligence

* * *

6. Twelve Reasons why the conduct of GEICO was arbitrary and capricious

* * *

(c) GEICO could easily have asked Mr. Nguyen questions which would permit a rational determination whether or not Mr. Nguyen was driving too fast for the conditions and whether he was paying attention. Your records of GEICO's interview of Mr. Nguyen will show that GEICO did not ask, e.g., exactly where Mr. Nguyen was heading, whether he was late for an appointment, which store he was trying to get to and whether that store was closing.

* * *

Mr. Wait's July 25 letter contains improper determinations of fact

* * *

31.02.02 Hearings Conducted by Administrative Law Judges

.03 Request for a Hearing

A. A person may request a hearing under Insurance Article, § 2-210(a)(2), Annotated Code of Maryland, by submitting a written statement to the commissioner, signed by the requesting person.

* * *

APPENDIX U

EXCERPT FROM LETTER FROM MARYLAND INSURANCE ADMINISTRATION TO PETITIONER AND GEICO, JULY 25, 2006

[SEAL]

MARYLAND INSURANCE ADMINISTRATION

Robert L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lt. Governor

R. STEVEN ORR
Commissioner

JAMES V. McMAHAN, III
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property and Casualty

525 St. Paul Place, Baltimore, Maryland 21202-2272
Phone: 410-468-2340 Fax: 410-468-2334
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

Mr. Wilbur Friedman
16303 Spring Water Court
Rockville, Maryland 20853

Re:	MIA File Number:	134032-P-2006-CEA-C
	Company:	Government Employees Insurance Company (GEICO)
	Claim Number:	015871581-0101-108
	Date of Loss:	5/16/2006

Dear Mr. Friedman:

We have carefully reviewed your complaint, the response of the insurance company, and the other documents

contained in the file. Based on our review, it is our view that GEICO did not violate the Insurance Article in denying your claim. Accordingly, the Maryland Insurance Administration (Insurance Administration) must deny your complaint . . . .

* * *

This determination is subject to your right to a hearing pursuant to §2-210 of the Insurance Article and the Code of Maryland Regulations (COMAR) .31.02.02. To request a hearing you must do so in writing and the request must be received by the Insurance Administration within thirty (30) days of the date of this letter* * *

* * *

You should be aware that a hearing in a case of this nature is again limited to the issue of whether the insurance company has acted arbitrarily or capriciously.

* * *

Sincerely,

/s/ Daniel Wait
Daniel Wait
Insurance Investigator
410.468.2391

* * *

APPENDIX V

EXCERPT FROM GEICO'S REGIONAL LIABILITY DIRECTOR HERBERT'S JULY 13, 2006 LETTER TO MARYLAND INSURANCE ADMINISTRATION, RESPONDING TO MARYLAND INSURANCE ADMINISTRATION'S JULY 6 LETTER

[Received JUL 17 2006]

GEICO
Fredericksburg, VA

Bob Herbert
Regional Liability Director

July 13, 2006

ATTN DANIEL WAIT
MARYLAND INSURANCE ADMINISTRATION
525 ST. PAUL PLACE
BALTIMORE, MD. 21202-2272

RE:	CLAIM NO.:	015871581-0101-108
	INSURED:	Tommy Nguyen
	DATE OF LOSS:	5/16/06
	COMPLAINANT:	Wilbur Friedman
	MIA FILE #:	134032-P-2006-CEA-C

Dear Mr. Wait:

Thank you for your letter of July 6, 2006. It has been referred to me for a response.

* * *

Government Employees Insurance Company
One GEICO Blvd. • Fredericksburg, VA 22412
540-286-4400

Sincerely,
/s/ Bob Herbert
Bob Herbert
Regional Liability Director
Government Employees Insurance Company
NAIC #22063

APPENDIX W

EXCERPT FROM LETTER FROM MARYLAND INSURANCE ADMINISTRATION TO VICE-PRESIDENT PUSHMAN, REQUESTING INFORMATION ABOUT THE COLLISION, JULY 6, 2006

[SEAL]

MARYLAND INSURANCE ADMINISTRATION

ROBERT L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lt. Governor

R. STEVEN ORR
Commissioner

JAMES V. McMAHAN, III
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property and Casualty

525 St. Paul Place, Baltimore, Maryland 21202-2272
Phone: 410-468-2340 Fax: 410-468-2334
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

July 6, 2006

Mr. David H. Pushman
GEICO General Insurance Company
One GEICO Boulevard
Fredericksburg, Virginia 22412-0001

RE: MIA File Number: 134032-P-2006-CEA-C
Complainant: Mr. Wilbur Friedman
Claim Number: 0158715810101108
Date of Loss: 5/17/2006

Dear Mr. Pushman:

The above named complainant has requested that the Maryland Insurance Administration undertake a review of your company's actions in handling a claim. A copy of the complaint is enclosed.

Please identify the name of the insurer and the NAIC number and provide/answer the following with respect to this claim:

1. A complete copy of the claim log for this file showing the complete diary entries of all adjusters and/or supervisors who have reviewed this claim.
2. A detailed account of your company's investigation into this loss and how it was determined that your insured was not legally liable for the complainant's full damages. Please provide copies of any documents that would support your company's position. Where available, that documentation should include, but is not limited to, a copy of the police report, copies of all statements taken in connection with this loss and any scene investigation report and/or photographs created in connection with this loss. If you have recorded statements that have not yet been transcribed, a copy of the tape will suffice.

* * *

Sincerely,
/s/ Daniel Wait
Daniel Wait
Insurance Investigator
410.468.2391

Enclosure

cc: Mr. Wilbur Friedman
16303 Spring Water Court
Rockville, Maryland 20853

APPENDIX X

EXTRACT FROM PETITIONER'S JUNE 23, 2006 LETTER TO MARYLAND INSURANCE ADMINISTRATION COMPLAINING OF GEICO'S FAILURE TO PAY HIS CLAIM

Wilbur H. Friedman
* * *
June 23, 2006

Honorable R. Steven Orr,
Insurance Commissioner
525 Saint Paul Place
Baltimore, MD 21202-2272

Dear Mr. Orr:

I. The Facts

Now that you have solved one problem with GEICO, I present you with another . . . .

* * *

Vinh Phuc Nguyen * * * was driving a car behind me, and swerved to pass. * * * His car struck my rear right door and did $1606.10 of damage.

GEICO, Mr. Nguyen's insurance carrier, used shifting reasons for not paying my claim.

* * *

II. Argument

Let me be perfectly unparanoid about this. GEICO did not single me out. In my case, I infer that GEICO thought that I would not bring witnesses from out of state to any trial. Instead, GEICO is engaged in a pro-

gram of stiffing individuals whom its customers hit in order to save money increase its corporate profit.

* * *

III. What can you do?

* * *

If you can help me assert my claim, please do so. * * *

Yours truly,

Wilbur H. Friedman

APPENDIX Y

EXCERPT FROM PRESS RELEASE BY GEICO DATED MARCH 1, 2007, CONCERNING VICE-PRESIDENT PUSHMAN'S FUTURE RETIREMENT AND GEICO'S OPERATIONS

NEWS & PRESS

GEICO Names John McCutcheon Vice President

WASHINGTON, D.C., March 1, 2007 — GEICO recently named John McCutcheon of Germantown, Md., vice president of Government Employees Insurance Company (GEICO), with responsibility for underwriting and product management at the company's headquarters in Chevy Chase, Md. He succeeds Dave Pushman, vice president, who plans to retire this year.

* * *

GEICO (Government Employees Insurance Company) is the fourth largest private passenger auto insurer in the United States. It provides auto insurance coverage for more than 7 million policyholders and insures more than 12 million vehicles. * * *

* * *

APPENDIX Z

AFFIDAVIT DATED FEBRUARY 1, 2008 BY GEICO VICE-PRESIDENT STEWART ABOUT VICE-PRESIDENT PUSHMAN

AFFIDAVIT

STATE OF MARYLAND)
) ss.:
COUNTY OF MONTGOMERY)

Jan C. Stewart, being duly sworn, deposes and says:

I am Vice President of Government Employees Insurance Company ("GEICO") responsible for the Human Resources Department. In my capacity as Vice President of Human Resources I am responsible for ensuring that employment records for all GEICO associates are maintained.

The company employment records provide as follows:

- David H. Pushman was first employed by GEICO on June 28, 1971;
- He was assigned as the Vice President in charge of the Fredericksburg, Virginia regional office on January 22, 2005;
- Mr. Pushman experienced serious health problems in the summer of 2006 and was placed on sick leave beginning June 27, 2006;
- Effective September 5, 2006, Vice President Nancy Pierce was reassigned to manage the Fredericksburg regional office and Mr. Pushman was reassigned to manage the Underwriting and Product Management staff department located in the Chevy Chase, Maryland headquarters building; and

- Mr. Pushman was unable to return to work in any capacity and was placed on long-term disability effective as of December 25, 2006.

Further Affiant sayeth not.

I solemnly affirm under the penalties of perjury that the contents of the foregoing affidavit are true to the best of my knowledge, information and belief. Dated this 1st day of February, 2008.

/s/ Jan C. Stewart
JAN C. STEWART

Sworn to before me this
1st day of February, 2008

/s/ Debra C. Nielsen
Notary Public
My term of office expires 3-1-10

APPENDIX AA

OFFICE OF ADMINISTRATIVE HEARINGS RULING ON MOTION TO REOPEN THE RECORD IN *SIMON MOSKOWITZ v. MARYLAND DEPARTMENT OF THE ENVIRONMENT*, OAH NO. MDE-LHD-055-06-48463, MAY 18, 2007

BEFORE JANA CORN BURCH,
ADMINISTRATIVE LAW JUDGE OF THE
MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS

SIMON MOSKOWITZ,
PETITIONER

v.

MARYLAND DEPARTMENT OF THE ENVIRONMENT,
RESPONDENT

RULING ON MOTION TO REOPEN THE RECORD

STATEMENT OF THE CASE
BACKGROUND
DISCUSSION
ORDER

STATEMENT OF THE CASE

The Anne Arundel County Department of Health (AACDH) has denied a Certificate of Potability for a domestic well located at 655 Old Herald Harbor Road (Property). The stated basis for the denial is that the

well in question does not comply with applicable regulations. The owner of the Property, Simon Moskowitz (Petitioner), sought and was denied a deviation to allow use of the noncompliant well. The captioned matter is his appeal of that denial.

A hearing on the appeal was conducted on April 10, 2007, before Jana Corn Burch, Administrative Law Judge (ALJ), at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Kurt D. Karsten, Esquire, represented the Petitioner. Jennifer L. Wazenski, Esquire, Assistant Attorney General, represented the Maryland Department of the Environment (MDE) and AACDH.

Brian Chew of AACDH wrote to the Driller on July 19, 2006. His letter noted that the well did not comply with COMAR 26.04.04.05B(2)(a)(1) and required that it be sealed, abandoned, and replaced by a compliant well. On or about August 4, 2006, the Petitioner wrote AACDH to formally request deviation from the regulatory setback criterion and approval of the well as drilled. AACDH denied this request on August 21.

On or about September 13, 2006, the Petitioner appealed the denial of his deviation request to MDE. Counsel for MDE transmitted the request for hearing to the OAH on November 6, 2006. As noted above, a hearing of the matter was held on April 10, 2007.

On April 12, 2007, Petitioner moved to Re-open the Record for Additional Testimony (Motion), and on April 20 MDE opposed the Motion (Opposition). This Ruling addresses that Motion and Opposition.

DISCUSSION

Applicable Standards

In Maryland, ALJs may "[i]ssue orders as are necessary to secure procedural simplicity and administrative fairness, and to eliminate unjustifiable expense and delay. . . ." COMAR 28.02.01.08B(10). The decision whether to order an administrative hearing record to be reopened is entrusted to an ALJ's discretion, and will be upheld unless arbitrary, capricious, or contrary to applicable law. *See, e.g., Maryland State Police v. Zeigler,* 330 Md. 540, 625 A.2d 914 (1993) (record reopened); *Reier v. State Dep't of Assessments & Taxation,* 397 Md. 2, 915 A.2d 970 (2007) (record not the captioned matter should be reopened for the taking of testimony, including direct and cross examination.

ORDER

Based on a careful review of the issues before me, and under the authority of COMAR 28.02.01.08B(10), I hereby grant the Motion and ORDER that the hearing in the captioned matter be REOPENED. I anticipate that during a single day I will receive any additional testimony deemed essential by either party, followed by no more than twenty minutes of closing arguments for each side. Toward that end:

1. Witnesses' names, and proffers as to the nature of their testimony, shall be submitted to the OAH and served on the opposing party by May 30, 2007.
2. Scheduling and other housekeeping matters shall be addressed in a telephone conference on a date to be determined. Counsel for the parties shall check their own calendars and those of their witnesses,

and be prepared to discuss availablility at that conference.

May 18, 2007
Date Decision Mailed

Jana Corn Burch,
Administrative Law Judge

APPENDIX BB

EXCERPTS FROM PETITIONER'S MAIN BRIEF TO COURT OF SPECIAL APPEALS OF MARYLAND, *WILBUR H. FRIEDMAN V. MARYLAND INSURANCE ADMINISTRATION*, NO. 01054
PAGES (iii) and (iv)

(iii)

TABLE OF AUTHORITIES – CASES

Allentown Mack Sales v. NLRB, 522 U.S. 359, 378 (1998) .....*

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APPENDIX CC

EXCERPTS FROM MARYLAND INSURANCE ARTICLE TITLE 27, SUBTITLE 3

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§27-301. Intent and effect of subtitle.

(a) *Intent of subtitle.* — The intent of this subtitle is to provide an additional administrative remedy to a claimant for a violation of this subtitle or a regulation that relates to this subtitle.

(b) *Effect of subtitle.* — (1) This subtitle provides administrative remedies only.

(2) This subtitle does not provide or prohibit a private right or cause of action to, or on behalf of, a claimant or other person in any state.

(3) This subtitle does not impair the right of a person to seek redress in law or equity for conduct that otherwise is actionable.

§27-302. Scope of subtitle.

(a) *Policies covered.* — This subtitle applies to each individual or group policy, contract, or certificate of an insurer or nonprofit health service plan that:

(1) is delivered or issued in the State;

* * *

§27-303. Unfair claim settlement practices — In general.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

* * *

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;

* * *

§27-304. Same — General business practice.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan, when committed with the frequency to indicate a general business practice, to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

* * *

(14) fail to provide promptly a reasonable explanation of the basis for denial of a claim or the offer of a compromise settlement;

(15) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

* * *

§27-305. Penalties.

(a) *For violation of §27-303.* — The Commissioner may impose a penalty:

(1) not exceeding $2,500 for each violation of §27-303 of this subtitle or a regulation adopted under §27-303 of this subtitle; and

* * *

(b) *For violation of §27-304.* — The penalty for a violation of §27-304 of this subtitle is as provided in §§1-301, 4-113, 4-114, and 27-103 of this article.

* * *

§27-306. Appeals.

An appeal from an order issued by the Commissioner under this subtitle shall be taken in accordance with §2-215 of this article. * * *

APPENDIX DD

MARYLAND INSURANCE ARTICLE, SECTION 2-210(a)(2) AND (c)

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§2-210. Hearings.

(a) *In general.* — (1) The Commissioner may hold hearings that the Commissioner considers necessary for any purpose under this article.

(2) The Commissioner shall hold a hearing:

* * *

(ii) on written demand by a person aggrieved by any act of, threatened act of, or failure to act by the Commissioner or by any report, regulation, or order of the Commissioner, except an order to hold a hearing or an order resulting from a hearing.

* * *

(c) *Applicability of Administrative Procedure Act.* — (1) Except as provided in paragraph (2) of this subsection, a hearing held under this section shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act — Contested Cases).

(2) A hearing held under this section is not subject to §10-216 of the State Government Article.

* * *

APPENDIX EE

EXCERPTS FROM MARYLAND INSURANCE ARTICLE, SECTION 2-215

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§2-215. Judicial review.

(a) *Authorized appeals.* — An appeal under this subtitle may be taken only from:

(1) an order resulting from a hearing;

* * *

(c) *Venue.* — (1) Subject to paragraph (2) of this subsection, an appeal under this subtitle shall be taken:

* * *

(ii) if a party to an appeal is an individual, to the circuit court of the county where the individual resides.

* * *

(h) *Judgment.* — The court to which an appeal is taken may:

(1) affirm the decision of the Commissioner;

(2) remand the case for further proceedings; or

(3) reverse or modify the decision of the Commissioner if substantial rights of the petitioners may have been prejudiced because administrative findings, inferences, conclusions, or decisions:

(i) violate constitutional provisions;

(ii) exceed the statutory authority or jurisdiction of the Commissioner;

(iii) are made by unlawful procedure;

(iv) are affected by other error of law;

(v) are unsupported by competent, material, and substantial evidence in view of the entire record, as submitted; or

(vi) are arbitrary or capricious.

* * *

APPENDIX FF

EXCERPTS FROM MARYLAND STATE GOVERNMENT ARTICLE, SECTIONS 9-1602, 9-1603, 9-1604, 9-1606

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§9-1602. Office of Administrative Hearings established.

The Office of Administrative Hearings is created as an independent unit in the Executive Branch of State government.

* * *

§9-1603. Chief Administrative Law Judge

Appointment

(a) The Office is headed by a Chief Administrative Law Judge appointed by the Governor with the advice and consent of the Senate.

* * *

§9-1604. Powers and duties of Chief Administrative Law Judge

Supervisory authority

(a) The Chief Administrative Law Judge shall:

(1) supervise the Office of Administrative Hearings;

(2) establish qualifications for administrative law judges;

(3) appoint and remove administrative law judges in accordance with §9-1605 of this subtitle;

* * *

(8) develop model rules of procedure and other guidelines for administrative hearings;

* * *

§9-1606.

(a) All units of State government shall cooperate with the Chief Administrative Law Judge in the discharge of his duties.

* * *

APPENDIX GG

MARYLAND STATE GOVERNMENT ARTICLE, SECTION 10-206(a)

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§ 10-206. Procedural regulations

Office of Administrative Hearings

(a)(1) The Office shall adopt regulations to govern the procedures and practice in all contested cases delegated to the Office and conducted under this subtitle.

(2) Unless a federal or State law requires that a federal or State procedure shall be observed, the regulations adopted under paragraph (1) of this subsection shall take precedence in the event of a conflict.

* * *

APPENDIX HH

CORPORATIONS AND ASSOCIATIONS ARTICLE, SEC. 2-414

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§2-414. Powers and duties of officers and agents.

(a) *Internally.* - As between himself and the corporation, an officer or agent of the corporation has the authority and shall perform the duties in the management of the assets and affairs of the corporation as:

1) Provided in the bylaws; and

2) Determined from time to time by resolution of the boards of directors not inconsistent with the bylaws.

(b) *As to third parties.* - The rights of any third party are not affected or impaired by any bylaw or resolution referred to in subsection (a) of this section unless the third party has knowledge of the bylaw or resolution.

APPENDIX II

18 U.S.C. SECTION 1702. OBSTRUCTION OF CORRESPONDENCE

TITLE 18 — CRIMES AND CRIMINAL PROCEDURE

PART I — CRIMES

CHAPTER 83 — POSTAL SERVICE

Sec. 1702. Obstruction of correspondence

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

* * *

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., Sec. 317 (Mar. 4, 1909, ch. 321, Sec. 194, 35 Stat. 1125; Feb. 25, 1925, ch. 318, 43 Stat. 977; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256).

Section 317 of said title 18, U.S.C., 1940 ed., was incorporated in this and section 1708 of this title.

Minor changes were made in phraseology.

Amendments

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than $2,000".

APPENDIX JJ

EXCERPT FROM 18 U.S.C. SECTION 1708, THEFT OR RECEIPT OF STOLEN PROPERTY GENERALLY

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

CHAPTER 83—POSTAL SERVICE

Sec. 1708. Theft or receipt of stolen mail matter generally

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein;

* * *

Shall be fined under this title or imprisoned not more than five years, or both.

* * *